TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~271~~. 56

JOHN SPARHAWK, GEORGE J. GROSS, AND J. DAVIS DUFFIELD, ASSIGNEES IN BANKRUPTCY OF CHARLES T. YERKES, JUNIOR, A BANKRUPT, APPELLANTS,

vs.

CHARLES T. YERKES, JUNIOR, A BANKRUPT; JOSEPH G. CASSATT, SABIN W. COLTON, JUNIOR, ALEXANDER H. DE HAVEN, FRANK N. DICK, GEORGE C. THOMAS, DAVID A. FREED, ROBERT GLENDENNING, JUNIOR, SOLOMON L. LEVY, PERCY F. SMITH, LEWIS H. TAYLOR, JUNIOR, AUGUSTUS THOURON, FRANK SMYTH, J. EDWARD SIMMONS, D. C. HAYS, AND GEORGE W. ELY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED JUNE 4, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 371.

JOHN SPARHAWK, GEORGE J. GROSS, AND J. DAVIS DUFFIELD, ASSIGNEES IN BANKRUPTCY OF CHARLES T. YERKES, JUNIOR, A BANKRUPT, APPELLANTS,

vs.

CHARLES T. YERKES, JUNIOR, A BANKRUPT; JOSEPH G. CASSATT, SABIN W. COLTON, JUNIOR, ALEXANDER H. DE HAVEN, FRANK N. DICK, GEORGE C. THOMAS, DAVID A. FREED, ROBERT GLENDENNING, JUNIOR, SOLOMON L. LEVY, PERCY F. SMITH, LEWIS H. TAYLOR, JUNIOR, AUGUSTUS THOURON, FRANK SMYTH, J. EDWARD SIMMONS, D. C. HAYS, AND GEORGE W. ELY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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1 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

JOHN SPARHAWK, GEORGE J. GROSS, and J. DAVIS DUFFIELD, Assignees in Bankruptcy of Charles T. Yerkes, Jr., a Bankrupt,

vs.

CHARLES T. YERKES, Jr., a Bankrupt; JOSEPH G. CASSATT, SABIN W. Colton, Jr., Alexander H. De Haven, Frank N. Dick, George C. Thomas, David A. Freed, Robert Glendenning, Jr., Solomon L. Levy, Percy F. Smith, Lewis H. Taylor, Jr., Augustus Thouron, Frank Smyth, J. Edward Simmons, D. C. Hays, George W. Ely, and Others, Members of the New York Board of Brokers.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *ss:*

2 Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1885, No. 31.

It is thus contained:

Be it remembered that on the nineteenth day of November, in the year of our Lord one thousand eight hundred and eighty-five, John Sparhawk, George J. Gross, and J. Davis Duffield, assignees in bankruptcy of Charles T. Yerkes, Jr., a bankrupt, by their attorney, George Junkin, Esquire, come into court here and files their bill of complaint against Charles T. Yerkes, Jr., a bankrupt; Joseph G. Cassatt, Sabin W. Colton, Jr., Alexander H. De Haven, Frank N. Dick, George C. Thomas, David A. Freed, Robert Glendenning, Jr., Solomon L. Levy, Percy F. Smith, Lewis H. Taylor, Jr., Augustus Thouron, Frank Smyth, J. Edward Simmons, D. C. Hays, George W. Ely, and others, members of the New York Board of Brokers, in the words and figures following, to wit:

3 In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

JOHN SPARHAWK, GEORGE J. GROSS, and J. DAVIS DUFFIELD, Assignees in Bankruptcy of Charles T. Yerkes, Jr., a Bankrupt, Complainants,

and

CHARLES T. YERKES, Jr., a Bankrupt; JOSEPH G. CASSATT, Sabin W. Colton, Jr., Alexander H. De Haven, Frank N. Dick, George C. Thomas, David A. Freed, Robert Glendenning, Jr., Solomon L. Levy, Percy F. Smith, Lewis H. Taylor, Jr., Augustus Thouron, Frank Smyth, J. Edward Simmons, D. C. Hays, George W. Ely, and Others, Members of the New York Board of Brokers, Respondents.

To the honorable the judges of the said court:

The said complainants bring this their bill of complaint against the above-named respondents, and show unto your honors:

I. That on the 13th day of December, 1871, Charles T. Yerkes, Jr., trading as Charles T. Yerkes, Jr., & Co., was duly adjudicated a bankrupt in the district court of the United States for the eastern district of Pennsylvania by the Honorable John Cadwallader, who was then the judge of the said court; and on the 12th day of January, 1872, your orators were duly appointed the assignees of the said bankrupt and qualified according to law; and on the 24th day of January, 1872, all of the said bankrupt's estate of every description was assigned, according to law, to and the same is now vested in your orators, except what has been sold and divided among the creditors of the said bankrupt.

II. That at the time said Charles T. Yerkes, Jr., was so ad-
4 judicated a bankrupt and his assets and property and rights of property of every description were so vested in your orators he was a member of an association located in and doing business in the city of New York and known as "the New York Stock Exchange" or "the New York Board of Brokers." In his schedules of his personal estate filed in said court of bankruptcy the said bankrupt described this asset in these words: "Membership in board of brokers, New York, of no specified value." This board of brokers is an unincorporated association organized for the purpose of facilitating the dealings in stocks, bonds, and other securities by brokers in this city, having a president, vice-president, and secretary. Membership therein is acquired and held subject to various regulations prescribed by its constitution and by-laws, fees and annual charges being payable by its members, and these memberships have become to be regarded as very valuable, as they may be transferred by the member subject to the approval of certain committees, and provided there is no indebtedness of the member to the association or its members. Upon insolvency of a member his privileges are suspended, subject to his reinstatement upon the settlement of the debts to the association or any of its members. In case of the failure to make such settlements, provision exists for a sale of the insolvent membership and distribution of its proceeds among his creditor members, it being thus a fundamental principle of the association that the pecuniary value of the rights and privileges of membership shall be mutually pledged by all the members for the fulfilment of their contracts with each other and the association, and any surplus after paying or settling these would go to the insolvent member.

This association has existed in that city for many years and continuously since 1871, and still exists; and the persons whose names are recited in the caption of this bill are the present members of the association so far as they are known to your orators; and the officers of said association at the present time are J. Edward Simmons, president; D. C. Hays, treasurer; George W. Ely, secretary.

III. At the time of his insolvency and bankruptcy Charles T. Yerkes, Jr., was indebted to three members of this association in sums aggregating about $8,522.99, and was not indebted to the asso-
ciation. Notice was given to the officers of the association by
5 your orators, immediately after they qualified as assignees, of

their appointment, and your orators gave public notice of the same by the usual advertisements in the newspapers, and they subsequently gave formal written notice to the officers of the said association that they claimed to own the said membership and asked for the form of transfer and sale thereof.

IV. The subject of the right to this membership and the property therein was a matter of discussion between the said Charles T. Yerkes, Jr., and your orators, he claiming that his rights to said membership were purely personal to himself, and that the same did not pass to or vest in your orators, whilst they uniformly claimed in these discussions that they were property and assets which did pass to and vest in them.

At the time of the bankruptcy the market value of the said membership would not have been equal to the amount due by the said bankrupt to his fellow-members, and therefore would not have yielded anything to the bankrupt estate.

In interviews with your orators the matter of the payment of the annual dues upon the membership was spoken of, and one of your orators said to the said Charles T. Yerkers, Jr., that as the board had made the claim upon him for these dues he had better pay them, and any claims of that character which he might pay your orators would recognize as properly to be refunded to him out of anything which they might hereafter realize from the seats in the board.

There were repeated interviews between your orators and the said Charles T. Yerkes, Jr., upon this subject, in which your orators maintained their right to the membership, subject to his right to reimbursement for current expenses, which they might have been required themselves to pay in order to keep their title to the same, and he maintaining that your orators had no rights thereto.

V. The membership in the said association was not forfeited or sold. The fifteen members of the said association who were creditors of Charles T. Yerkes, Jr., proved their debts in bankruptcy against him and received their dividends thereon, amounting to twenty-eight per cent.

These dividends were declared at the following times, and were so paid shortly after said dates, viz:

6 Ten (10) per cent. on July 19th, 1872.
Nine (9) per cent. on May 12th, 1873.
Eight (8) per cent. on April 5th, 1878.
One (1) per cent. on January 30th, 1880.

These creditors made no mention in their proof of claims of the lien they had upon the membership in said association, and they were awarded and received the full amount of their said dividends without objection from any one, and said proofs of claims are unassigned.

VI. The said Charles T. Yerkes, Jr., received his final discharge as a bankrupt on October 3, 1873, and your orators are informed that in some way and by some means he procured the withdrawal of the suspension of his membership, and he was reinstated in his membership somewhere about 1882 or 1883, of which reinstatement

and withdrawal of suspension your orators were wholly unaware and had no notice or information of until immediately before the filing of the petition mentioned in the next paragraph of this their bill of complaint. During the interval from 1871 to this time his membership was merely suspended, he paying the annual charges after his interview upon the subject with your orators, as hereinbefore set forth.

Your orators cannot state the particulars of the terms upon which he obtained from these creditors such a settlement as secured his reinstatement in the said board of brokers, as they were not parties to it nor were they consulted by him or any one in reference thereto, but they have been informed by him that they were to have the right to get all dividends that might hereafter be paid by your orators as such assignees.

VII. The market value of said membership has greatly appreciated and is now worth from $30,000 to $34,000, the last sale of the same, made within a few weeks, being at this latter sum. Your orators, believing it to be their duty to endeavor to realize from the sale of the said membership whatever was possible, and also that if they offered it at public sale the said Charles T. Yerkes, Jr., would take such action as would prevent such sale producing the full value of the membership, applied to the Hon. William Butler, judge of the said district court, on the 28th day of April, 1884, by petition, praying that the rights of the said Charles T. Yerkes, Jr., and of your orators to the said membership might be determined, and that an order might be made for the sale of the same, and that he
7 be enjoined from interfering with the said sale, and for such further order and decree as the exigencies of the case might require. A citation was granted by the said judge, served upon Charles T. Yerkes, Jr., who appeared and filed his answer thereto, and the matter was referred to Joseph Mason, Esq., register in bankruptcy, who took testimony and made a report recommending that the petition should be dismissed.

Upon argument upon the exceptions to this report the said learned judge dismissed the said exceptions, refused the order prayed for in the said petition, and dismissed the said petition on the 26th day of June, 1885; and afterwards, on the 8th day of October, 1885, the circuit court of the United States for the eastern district of Pennsylvania, upon a petition for a review of the said order of the said district judge, affirmed the said order and dismissed the said petition for review.

VIII. That your orators are informed and believe that the action of the said learned judge and court recited in the last paragraph was based mainly upon the suggestion that there was no warrant in the law for the granting of such a summary order as was prayed for and because the said board of brokers had rights involved in the subject-matter of said petition which could not properly be determined without their having their day in court and being brought in before any decree should be made in the premises.

IX. Your orators show to your honors that the membership of Charles T. Yerkes, Jr., in the said association was a species of prop-

erty which passed to them as the assignees of the said bankrupt, and that they have never abandoned their claim to the same; that, in order that its real value may be obtained by a sale thereof for the benefit of the bankrupt estate, it is necessary that the rights of the said association and of the said Charles T. Yerkes, Jr., as well as those of your orators, under the facts and circumstances hereinbefore stated, should be judicially ascertained, and that the same should be sold under the order of this court in such way as to realize the real market value thereof, or that the said Charles T. Yerkes, Jr., should account to your orators for the market value of the said membership and pay to your orators such sums of money as they have paid to the said members of said association as dividends upon their said debts, which were liens upon his said membership, in case it should be held by your honors that the said Charles T. Yerkes, Jr., was entitled to retain said membership as against your orators; that your orators believe that unless this course is pursued, if your orators should expose the same to public or private sale, the said Charles T. Yerkes, Jr., and the said association would interpose such notices and objections as would effectually frustrate said sale and prevent the obtaining the real market value thereof.

8

Wherefore your orators need and pray for the following equitable relief:

1st. That the rights of your orators, of the said Charles T. Yerkes, Jr., and of the said association in and to the said membership may be ascertained and determined by your honors.

2d. That it may be decreed that the said membership in the said association was an asset of the said bankrupt's estate, which passed to and is now vested in your orators as his assignees.

3d. That a sale of the said membership may be decreed by your honors, and the said Charles T. Yerkes, Jr., and the said association and all of its members may be restrained by the order or injunction of your honors from interfering with the sale of the same, and be decreed to admit the vendee of your orators to full membership in the said board or association in the place of the said Charles T. Yerkes, Jr.

4th. That the proceeds of the said sale when so made may be paid to your orators for distribution among the creditors of the said bankrupt.

5th. That if it shall be determined by your honors that the said Charles T. Yerkes, Jr., is entitled to be reimbursed for any moneys paid by him for or on account of the said membership that it may be ordered that such reimbursement shall be made out of the proceeds of the said sale.

6th. Or if it should be determined by the court that the said Charles T. Yerkes, Jr., had the right to retain the said membership in the said association as against your orators that he be ordered to account for the market value of the same, and to pay to your orators such amounts as they have paid as dividends upon the debts due by him to his fellow-members of the said association at the time of

his said insolvency and bankruptcy, and which debts were a lien upon said membership, together with interest thereon.

7th. That discovery may be made by the respondents as to the names and residences of all the other members of the said association.

9 8th. That your orators may have such other and further relief as to your honors may seem meet and the justice of the case may to your honors appear proper.

9th. That a subpœna in equity be granted requiring the said respondent to appear and answer this bill of complaint.

GEORGE JUNKIN,
Solicitor for Complainants.

10 (Endorsed:) No. 31. October sessions, 1885. U. S. C. C. John Sparhawk *et al.*, assignees of Charles T. Yerkes, Jr., a bankrupt, complainants, and Charles T. Yerkes, Jr., a bankrupt, and the New York Board of Brokers, respondents. In equity. Bill of complaint. Please issue subpœna in equity, r't'ble *sec. reg.* Yours, &c., Geo. Junkin, sol'r for compl'ts. Nov. 19, 1885. To clerk U. S. C. C., &c. George Junkin, solicitor for complainants. Filed Nov. 19, 1885.

11 And now, to wit, this first day of February, A. D. 1886, Sabin W. Colton, Jr., by his attorney, comes into court here and files his answer in the words and figures following, viz:

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of October Sessions, 1885.

JOHN SPARHAWK *et al.*, Assignees of Charles T. Yerkes, Jr., a Bankrupt, Complainants, and CHARLES T. YERKES, Jr., a Bankrupt, and The New York Board of Brokers, Respondents.	No. 31. In Equity.

To the honorable the judges of the said court:

The answer of Sabin W. Colton, Jr., to the bill of complaint of complainants respectfully shows—

That this defendant is not a member of the New York Board of Brokers, as is averred in the bill of complaint filed, and the defendant further says that he has no knowledge or interest in the

12 other matters stated in the said bill of complaint.

Wherefore he asks that as to him the said bill of complaint be dismissed with costs.

S. W. COLTON, JR.

Sworn and subscribed to before me this 1st day of February, 1886.
[SEAL.] JOSEPH S. CLARK,
Notary Public.

(Endorsed:) 31. Oct. sess., 1885. U. S. C. C. Sparhawk *et al. vs.* Yerkes, Jr., *et al.* Answer of Sabin W. Colton, Jr. Filed Feb. 1, 1886. W. von A. Williamson, *pro* clerk. S. Dickson.

13 And now, to wit, the 1st day of February, A. D. 1886, Frank M. Dick, by his attorney, comes into court here and files his answer in the words and figures following, viz:

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of October Sessions, 1885.

JOHN SPARHAWK *et al.*, Assignees of Charles T. Yerkes, Jr., a Bankrupt, Complainants, and CHARLES T. YERKES, Jr., a Bankrupt, and The New York Board of Brokers, Respondents. } No. 31. In Equity.

To the honorable the judges of the said court:

The answer of Frank M. Dick to the bill of complaint of complainants respectfully shows—

That this defendant is not a member of the New York Board of Brokers, as is averred in the bill of complaint filled; and the defendant further says that he has no knowledge or interest in

14 the other matters stated in the said bill of complaint.

Wherefore he asks that as to him the said bill of complaint be dismissed with cos's.

FRANK M. DICK.

Sworn and subscribed to before me this 29th day of January, 1886.

WALTER C. RODMAN,
[SEAL.] *Notary Public.*

(Endorsed:) 31. Oct. sess., 1885. U. S. cir. court. Sparhawk *et al. vs.* Charles T. Yerkes, Jr., *et al.* Answer of Frank M. Dick. Filed Feb. 1, 1886. W. von A. Williamson, *pro* clerk. S. Dickson.

15 And now, to wit, this first day of February, A. D. 1886, George C. Thomas, by his attorney, comes into court here and files his answer in the words and figures following, viz:

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of October Sessions, 1885.

JOHN SPARHAWK *et al.*, Assignees of Charles T. Yerkes, Jr., a Bankrupt, Complainants, and CHARLES T. YERKES, Jr., a Bankrupt, and The New York Board of Brokers, Respondents. } No. 31. In Equity.

To the honorable the judges of the said court:

The answer of George C. Thomas to the bill of complaint of complainants respectfully shows—

That this defendant is not a member of the New York Board of Brokers, as is averred in the bill of complaint filed; and the defendant further says that he has no knowledge or interest in the
16 other matters stated in the said bill of complaint.

Wherefore he asks that as to him the said bill of complaint be dismissed with costs.

GEORGE C. THOMAS.

Sworn and subscribed to before me this 29 day of Jan'y, 1886.

GEO. H. HILL.
[SEAL.] *Notary Public.*

(Endorsed:) U. S. circuit court. 31. Oct. sess., 1885. Sparhawk *et al., vs.* Charles T. Yerkes, Jr., *et al.* Answer of George C. Thomas. Filed Feb. 1, 1886. W. von A. Williamson, *pro* clerk. S. Dickson.

17 And now, to wit, this first day of February, A. D. 1886, David A. Freed, by his attorney, comes into court here and files his answer in the words and figures following, viz:

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of October Sessions, 1885.

JOHN SPARHAWK *et al.*, Assignees of Charles T. Yerkes, Jr., a Bankrupt, Complainants,
and
CHARLES T. YERKES, Jr., a Bankrupt, and The New York Board of Brokers, Respondents.
} No. 31. In Equity.

To the honorable the judges of the said court:

The answer of David A. Freed to the bill of complaint of complainants respectfully shows—

That this defendant is a member of the New York Stock Exchange, as is averred in the bill of complaint filed, but the defendant further says that he has no knowledge or interest in the other
18 matters stated in the said bill of complaint.

Wherefore he asks that as to him the said bill of complaint be dismissed with costs.

DAVID A. FREED.

Sworn and subscribed to before me this 1st day of February, 1886.

WALTER C. RODMAN,
[SEAL.] *Notary Public.*

(Endorsed:) 31. Oct. sess., 1885. U. S. C. C. Sparhawk *et al. vs.* Yerkes *et al.* Answer of David A. Freed. Filed Feb. 1, 1886. W. von A. Williamson, *pro* clerk. S. Dickson.

19 And now, to wit, February 1st, A. D. 1886, Frank Smyth, by his attorney, comes into court here and files his answer in the words and figures following, viz:

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of October Sessions, 1885.

JOHN SPARHAWK *et al.*, Assignees of Charles T. Yerkes, Jr., a Bankrupt, Complainants,
and
CHARLES T. YERKES, Jr., a Bankrupt, and The New York Board of Brokers, Respondents.
} No. 31. In Equity.

To the honorable the judges of the said court:

The answer of Frank Smyth to the bill of complaint of complainants respectfully shows—

That this defendant is a member of the New York Stock Exchange, as is averred in the bill of complaint filed; but the defendant further says that he has no knowledge or interest in the
20 other matters stated in the said bill of complaint.

Wherefore he asks that as to him the said bill of complaint be dismissed with costs.

FRANK SMYTH.

Sworn and subscribed to before me this 1st day of February, 1886.

WALTER C. RODMAN,
[SEAL.] *Notary Public.*

(Endorsed:) 31. Oct. sess., 1885. U. S. C. C. Sparhawk *et al. vs.* Yerkes, Jr., *et al.* Answer of Frank Smyth. Filed Feb. 1, 1886. W. von A. Williamson, *pro* clerk. S. Dickson.

21 And now, to wit, this second day of February, A. D. 1886, F. Percy Smith, by his attorneys, comes into court here and files his answer in the words and figures following, viz:

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of October Sessions, 1885.

JOHN SPARHAWK *et al.*
vs.
PERCY F. SMITH *et al.*
} No. 31.

The separate answer of F. Percy Smith to the bill of complaint of John Sparhawk *et al.*

To the honorable the judges of the said court:

And now comes the said F. Percy Smith, one of the defendants named in the said bill, and, without waiving but reserving all exceptions to the irregularities and imperfections thereof, nevertheless answers the matters of fact therein set forth as follows:

I. That this defendant is sued in the above-entitled case as Percy F. Smith, and claims the same benefit from said misnomer as though it were pleaded by him in abatement.

22 II. Respondent is not now and never has been a member of the New York Board of Brokers or of the New York Stock Exchange, and therefore has no interest whatever in the controversy in the above case. This respondent has no knowledge whatever nor information sufficient to enable him to form a belief as to the truth of the facts in said bill averred, but, if material, prays that the plaintiffs may be held to prove the same in due form.

Wherefore he prays to be hence dismissed with costs.

F. PERCY SMITH.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } ss:

F. Percy Smith, the respondent above named, being duly sworn according to law, deposes and says that the facts set forth in the foregoing answer are true.

F. PERCY SMITH.

Sworn to and subscribed before me this 1st day of February, A. D. 1886.

WILLIAM G. WISE,
Notary Public.

[SEAL.]

23 (Endorsed:) 31. Oct. sess., 1885. C. C. U. S. Sparhawk *et al. vs.* Yerkes *et al.* Separate answer of F. Percy Smith. Filed Feb. 2, 1886. W. von A. Williamson, *pro* clerk. Read & Pettit.

24 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

JOHN SPARHAWK, GEORGE J. GROSS, and J. Davis Duffield, Assignees in Bankruptcy of Charles T. Yerkes, Jr., a Bankrupt, Complainants, and CHARLES T. YERKES, Jr., the said Bankrupt, and Joseph G. Cassatt and Others, Members of the New York Board of Brokers, Respondents.	No. 31. Of October Session, 1885. In Equity.

To the honorable the judges of the said court:

The separate answer of Charles T. Yerkes, Jr., to the above bill of complaint respectfully showeth—

I. I admit the truth of the statements contained in the first paragraph of said bill.

II. I admit the truth of the statements contained in the second paragraph of said bill, except that, as I have for many years resided in Chicago, I have no knowledge whether the other respondents named in said bill are members of the New York Board of Brokers or who are its officers, and except also so far as it might be inferred

from the statements in said paragraph that an insolvent
25 member of the New York Board of Brokers has a right to be reinstated upon the settlement of his indebtedness. His readmission is a matter of grace and not of right, which fact will appear by the constitution and by-laws of the association, referred to in said bill, and I pray that complainants may be required to make due proof of said constitution and by-laws.

III. I admit that at the time of my bankruptcy I was indebted to three members of the said association in sums aggregating about $8,522.99 and was not indebted to the association. I have no knowledge of any notices given by complainants to the association, but am informed that they gave no other notice than a mere statement of their appointment. If the allegations as to notice in the third paragraph of said bill shall be deemed material, I pray that complainants may be compelled to make full proof thereof.

IV. I deny that the subject of the right to this membership and the property therein was a matter of discussion between complainants and myself, and that there were repeated interviews between complainants and myself on the subject. I deny that there was any interview between us such as is alleged in the fourth paragraph of said bill, in which one of the complainants said to me that I had better pay the annual dues, and that complainants would recognize my right to have the same refunded out of the proceeds of the seat. On the contrary, I aver that the membership was seldom mentioned between us, and when it was so mentioned the complainants, either expressly or tacitly, conceded that there was nothing to be realized from it for the estate, and for four or five years prior to the petition mentioned in the seventh paragraph of the bill nothing whatever was said by either party to the other on the subject. I admit that at the time of the bankruptcy the market value of the said membership would not have been equal to the amount due by me to my fellow-members, and therefore would not have yielded anything to the estate in bankruptcy, and I aver that for this reason complainants made no effort whatever to preserve the membership, pay dues, or assume any responsibility with regard to it.

26 V. I admit that the membership in said association was not forfeited or sold. I have no knowledge with respect to the other matters mentioned in the fifth paragraph of the bill.

VI. I admit that I was duly discharged as a bankrupt on October 3, 1873. At the time of my discharge my membership in said association had not been suspended, but as an insolvent member I had been suspended from the privileges of membership. Both before and after my discharge, by my own personal exertions, I prevailed upon the members of the board not to insist upon the sale of my membership, but to keep it alive for my personal benefit. I paid regularly the dues of the association and the assessments for the gratuity fund which was established by the association. After my discharge I paid to the members of the association who were creditors large sums of money and other valuable considerations on account of their personal claims against me. In 1883, having by these means paved the way for a request for that which was

purely a matter of grace and not of right, viz., a readmission to the privileges of membership, I applied for such readmission, and, after proceedings taken in accordance with the by-laws, I was duly readmitted.

VII. I admit the truth of the statements contained in the seventh paragraph of this bill.

VIII. I have no knowledge of the reasons for the decisions of the district and circuit courts mentioned in the eighth paragraph of said bill other than as appears by the record of the said proceedings.

IX. I aver that at the time of the bankruptcy the said membership had no present or prospective value as an asset of the estate in bankruptcy, and that in view of that fact complainants took no steps to preserve it and carefully abstained for thirteen years from taking possession of or assuming any responsibility concerning it. It was saved from sale by my personal exertions and as a personal favor to myself on the part of the members of the association.

27 After the bankruptcy a benefit fund, in the nature of a life insurance, was established in the association, which added largely to the value of the membership, but which required a constant payment of assessments. These assessments I paid with my own moneys earned after my discharge. I subsequently paid sums of money earned after my discharge and other valuable considerations to my creditors in the association, and thus procured favorable action on my application for readmission to the privileges of the association. Any value which said membership has to-day is due solely to my own labor and expenditure after my bankruptcy. Without this labor and expenditure the membership would have been of no value and would long ago have been forfeited. I have never threatened to interfere with any sale by the complainants of any interest they might have.

I pray to be hence dismissed with my reasonable costs.

CHAS. T. YERKES, JR.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Charles T. Yerkes, Jr., being duly sworn, says that the statements contained in the foregoing answers are true to the best of his knowledge and belief.

CHAS. T. YERKES, JR.

Sworn and subscribed to before me this 3rd day of April, A. D. 1886.

[SEAL.] WALTER A. DODSON,
Notary Public.

28 (Endorsed:) 31. Oct. sess., 1885. U. S. C. C., eastern district Penna. Sparhawk *et al. vs.* Yerkes *et al.* Separate answer of Charles T. Yerkes, Jr. Frank P. Prichard, solicitor for C. T. Yerkes, Jr. Filed Apr. 5, 1886.

29 And afterwards, to wit, on the 19th day of May, A. D. 1886, the plaintiffs, by their attorney, come into court here and file their replication in the words and figures following:

JOHN SPARHAWK *et al.* } U. S. C. C. In Equity. No. 31. Oct.
vs. Sess., 1885.
CHARLES T. YERKES *et al.* }

The plaintiffs join issue on the matters alleged in the answer of Charles T. Yerkes *et al.*, who have filed answers.

GEO. JUNKIN,
Att'y for Pl'ffs.

May 19, 1886.

(Endorsed:) No. 31. Oct. sess., 1885. Sparhawk *vs.* Yerkes. U. S. C. C. In eq. Replication to answer of Charles T. Yerkes *et al.* Junkin. Filed 19 May, 1886.

30 And now, the 26th day of May, A. D. 1886, Robert Glendinning, by his attorney, comes into court here and files his answer in the words and figures following, viz:

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

JOHN SPARHAWK and Others, Complainants, }
against }
CHARLES T. YERKES, Jr., and Others, Respondents. }

The Answer of Robert Glendinning, One of the Respondents.

This respondent, reserving unto himself all advantage of exception which may be taken to the bill of plaintiffs, for answer thereunto or to so much thereof as he is advised by counsel that it is his duty to make answer unto, says:

31 First. I know nothing of the allegations of fact set forth in complainants' bill, and if they are at all material I pray that proof may be made of the same.

Second. I am a member of the New York Board of Brokers, but did not become so until 1874, and was not a creditor of Charles T. Yerkes. I am advised that nothing contained in the bill filed in this case entitles the complainants to any relief of any kind as against this respondent; and I pray that I may be dismissed hence with my costs and charges, both wrongfully sustained.

ROBT GLENDINNING.

CITY OF PHILADELPHIA, *ss:*

Robert Glendinning, being duly affirmed according to law, doth depose and say that the facts set forth in the foregoing answer are true so far as they are stated of his own knowledge, and so far as they are stated upon the information of others he believes them to be true.

ROBT GLENDINNING.

Affirmed to and subscribed before me this 26th day of May, A. D. 1886.

WM. S. DIVINE,
[SEAL.] *Notary Public.*

32 (Endorsed:) 31. Oct. sess., '85. U. S. C. C. In equity. Sparhawk *vs.* Yerkes. The separate answer of Rob't Glendinning. Filed 26 May, 1886. John A. Merrick, *pro* clerk. Samuel B. Huey, attorney-at-law, 36 S. Third street, Philadelphia.

33 And now, to wit, the 26th day of May, A. D. 1886, L. H. Taylor, Jr., by his attorney, comes into court here and files his answer in the words and figures following, viz:

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity.

JOHN SPARHAWK and Others, Complainants,
against
CHARLES T. YERKES, Jr., and Others, Respondents.

The Answer of Lewis H. Taylor, Jr., One of the Respondents.

This respondent, reserving unto himself all advantage of exception which may be taken to the bill of plaintiffs, for answer thereunto or to so much thereof as he is advised by counsel that it is his duty to make answer unto, says:

First. I know nothing of the allegations of fact set forth
34 in complainants' bill, and if they are at all material I pray that proof may be made of the same.

Second. I am a member of the New York Board of Brokers, but did not become so until 1882, and was not a creditor of Charles T. Yerkes, Jr. I am advised that nothing contained in the bill filed in this case entitles the complainants to any relief of any kind as against this respondent, and I pray that I may be dismissed hence with my costs and charges, both wrongfully sustained.

L. H. TAYLOR, JR.

CITY OF PHILADELPHIA, *ss:*

Lewis H. Taylor, Jr., being duly affirmed according to law, doth depose and say that the facts set forth in the foregoing answer are true so far as they are stated of his knowledge, and so far as they are stated upon the information of others he believes them to be true.

L. H. TAYLOR, JR.

Affirmed to and subscribed before me this 26th day of May, A. D. 1886.

[SEAL.] WM. S. DIVINE,
Notary Public.

35 (Endorsed:) 31. Oct. sess., '85. U. S. C. C. Sparhawk *vs.* Yerkes. In equity. The separate answer of L. H. Taylor, Jr. Filed 26 May, 1886. John A. Merrick, *pro* clerk. Samuel B. Huey, attorney-at-law, 36 S. Third street, Philadelphia.

36 And now, to wit, this twenty-eighth day of May, A. D. 1886, Sol. L. Levy, by his attorney, comes into court here and files his answer in the words and figures following, viz:

In the Circuit Court of the United States for the Eastern District of Penna. In Equity.

JOHN SPARHAWK and Others, Complainants,
against
CHARLES T. YERKES, Jr., and Others, Respondents.

The Answer of Sol. L. Levy, One of the Respondents.

This respondent, reserving unto himself all advantage of exception which may be taken to the bill of plaintiffs, for answer thereto or to so much thereof as he is advised by counsel that it is his duty to make answer unto, says:

First. I know nothing of the allegations of fact set forth in complainants' bill, and if they are at all material I pray that proof may be made of the same.

Second. I am a member of the New York Board of Brokers,
37 but did not become so until —, and was not a creditor of Chas. T. Yerkes. I am advised that nothing contained in the bill filed in this case entitles the complainants to any relief of any kind as against this respondent, and I pray that I may be dismissed hence with my costs and charges, both wrongfully sustained.

S. L. LEVY.

CITY OF PHILADELPHIA, *ss:*

Sol. L. Levy, being duly sworn according to law, doth depose and say that the facts set forth in the foregoing answer are true so far as they are stated of his own knowledge, and so far as they are stated upon the information of others he believes them to be true.

S. L. LEVY.

Sworn to and subscribed before me this 28th day of May, A. D. 1886.

——— ———.

38 (Endorsed:) 31. Oct. sess., '85. U. S. C. C. In equity. Sparhawk *vs.* Yerkes. The separate answer of Sol. L. Levy. Filed 28 May, 1886. John A. Merrick, *pro* clerk.

39 And afterwards, to wit, on the 18th day of March, A. D. 1887, on motion of Messrs. Junkin and Prichard, counsel for parties, the court makes the following order, viz:

SPARHAWK *et al.*
vs.
YERKES *et al.* } U. S. C. C. In Eq. No. 31. Oct. Sess., 1885.

And now, March 18th, 1887, on motion of Mess. Junkin and Prichard, attorney for parties, the court appoint Joseph Mason, Esq., examiner and master in the above case.

We consent and agree to the above.

GEO. JUNKIN, *For Pl'ffs.*
SAM'L B. HUEY, " "
FRANK P. PRICHARD,
Att'y for Yerkes.

(Endorsed:) No. 31. Oct. sess., 1885. Sparhawk *et al. vs.* Yerkes *et al.* U. S. C. C. In eq. Appointment of examiner. Filed 18 Mar., 1887. Junkin, Prichard.

40 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

JOHN SPARHAWK and Others, Assignees,
vs.
CHARLES T. YERKES, Jr., and THE NEW YORK BOARD OF BROKERS. } October Sessions, 1885. No. 31.

JOHN SPARHAWK and Others, Assignees,
vs.
CHARLES T. YERKES, Jr., and THE PHILADELPHIA BOARD OF BROKERS. } October Sessions, 1885. No. 32.

To the honorable the judges of said court:

The master to whom the above suits were referred respectfully reports—

That on June 21, 1887, and at numerous subsequent times he was attended by George Junkin, Esq., solicitor for the plaintiffs; Frank P. Prichard, Esq., for the respondent, Charles T. Yerkes, Jr., and J. Rodman Paul and A. Sydney Biddle, Esqrs., for Shreve Ackley and others, members of Philadelphia Board of Brokers, respondents, and also by Messrs. Sparhawk and Duffield, two of the plaintiffs in person.

41 Nearly all of the material facts of the controversy in the present suits were developed in the proceedings upon the petition of the plaintiffs in the bankruptcy of Charles T. Yerkes, Jr., for an order for the sale of said bankrupt's memberships in the associations defendant.

After a careful consideration of the whole matter, the additional testimony taken, and the argument of counsel the master is not convinced that any material change need be made in the statement of the facts as set forth in his report in said proceedings. He deems it unnecessary, therefore, to restate the case, but annexes hereto and

makes part hereof his said report as register and the opinion of the court thereon.

Resuming the investigation at the stage in which it was left in the bankruptcy proceedings, with all the parties interested in the subject-matter now before the court (or having had notice and an opportunity of being heard), it remains to be considered whether the plaintiffs are entitled to a decree that the memberships now held by Mr. Yerkes in the associations defendant are assets of the estate in bankruptcy and should be sold as such by the assignees and their vendee be admitted to possession and the proceeds of sale paid to the plaintiffs for distribution among the bankrupt's creditors, or that Mr. Yerkes, retaining the seats, should account for the market value and pay the plaintiffs such amounts as they have paid in dividends to the members of the associations, with interest.

The conclusion of the register's report is: "The property now is not the property as it vested in the assignees at the time of the bankruptcy." Has it been shown that the transmutation has not destroyed its identity, and that the present memberships are "the legitimate products of the first?"

By virtue of the assignment in bankruptcy there were vested in the assignees "all the estate, real and personal, of the bankrupt, and all his right of action for property, and all his right of redeeming"
"property or estate, with the like right, title, power, and
42 authority to sell, manage, dispose of, and sue for" "as the bankrupt might or could have had if no assignment had been made," but only such as he had at the time of filing the petition, except as to transfers in fraud of creditors.

Quoad this peculiar property in these memberships, what were these rights?

1. To settle and arrange his affairs to the satisfaction of his creditors (members), and, having made satisfactory proof of settlement, to apply for readmission, which can only be obtained by the consent of a very large majority (two-thirds) of the governing committee in New York and at least fourteen out of eighteen in Philadelphia.

Or, failing to effect a settlement within one year (according to the present constitutions, the only ones offered in evidence):

2. To have his memberships sold and the proceeds paid *pro rata* to his creditors in the exchanges.

The assignees, however, exercised neither of these rights. They did not settle his affairs, pay his creditors (members) and effect his reinstatement, and then procure a transferee acceptable to the exchanges, and thereby realize the value of the property for the general creditors; nor did they insist upon the creditors in the exchanges pursuing the course required by the bankrupt act for creditors having a mortgage or pledge of real or personal property of the bankrupt or a lien thereon, providing that they shall only be admitted as creditors for the balance of their claims after deducting the value of such property determined by agreement or sale, but they allowed these creditors to prove their whole debts and without

objection to receive dividends aggregating upwards of seven thousand dollars.

The assignees declined to pay any of the charges incident to the continuance of the memberships, and from their appointment, January 12, 1872, until 1884, a period of about twelve years, other than giving the formal notice of their office and sending the letter
43 to the New York association of May 29, 1873, they made no effort to redeem these memberships or to "sell, manage, dispose of, or sue for them." On June 18, 1883, the bankrupt, who had been discharged October 3, 1873, was again admitted to membership in the Philadelphia Exchange, and on December 27, 1883, in the New York Exchange. Shortly afterwards, early in 1884, the petition for sale was presented in the bankruptcy proceedings.

On the whole the master is of opinion that there is no essential or necessary connection (*quoad* the rights of the plaintiffs) between the memberships at the time of the bankruptcy and those to which Mr. Yerkes was subsequently admitted. The latter constituted after-acquired property. Nor is the fact that the distribution of his estate in bankruptcy indirectly and partially contributed to the establishment of such relation with his former fellow-members as induced them to refrain from opposing his admission, a relevant consideration in determining the question of an actual right of property enforceable by virtue of the assignment. Suppose after the long inaction of the assignees Mr. Yerkes had induced the associations to admit some other person in his place, could it be possible that there could be any equity on the part of the assignees to demand from the associations the new member's ouster and the admission of their nominee?

Suppose again after his admission Mr. Yerkes had again become insolvent, could it be for a moment pretended that the associations could be restrained from appropriating under their rules the proceeds of the sales of his seats to his then fellow-member creditors?

The terms reinstatement and readmission, while probably sufficiently accurate for ordinary cases, are misleading when applied to the present case, in so far as they by implication suggest the resumption of original rights *de jure* and not *ex mera gratia*. Only to such reinstatement and readmission as could have been enforced in the manner and within the times prescribed by the rules of the associations were the assignees entitled. Such reinstatement and such readmission have not been accomplished.

44 It may seem unfortunate that the assignees could not have foreseen that property, which during a period of six years after the assignment was not worth the price of its redemption, would in a few years thereafter become very valuable; but the bankrupt act has not subjected its officers to the burden of the responsibility of such forecast, and the creditors cannot complain if they do not receive the benefits of the action which it might have induced.

Only such disposition and management of the estate as appears consistent with a reasonably speedy realization of the assets is contemplated by the bankrupt act. Its section as to limitations of ac-

tions is of peculiar significance in this connection; and, while the bar of the statute does not appear to have been formally pleaded by the respondents, in the opinion of the master, its application by the court could not be considered inequitable.

"No suit at law or in equity shall in any case be maintainable by or against such assignee or by or against any person claiming an adverse interest touching the property and rights of property aforesaid in any court whatsoever unless the same shall be brought within two years from the time the cause of action accrued for or against such assignee."

Essentially these memberships were pledges. The present suits are bills to redeem. Nearly fourteen years elapsed between the accruing of the right of redemption and the filing of the bills.

The master therefore recommends that they be dismissed.

April 6, 1888.

J. MASON, *Master.*

45 In the Matter of CHAS. T. YERKES, Jr., in Bankruptcy. No. 1434.

Testimony on Petition of Assignees for Sale of Membership in Stock Exchanges. Filed March 26th, 1885.

46 Testimony taken by Register Mason in the matter of the membership of Charles T. Yerkes, Jr., in the Philadelphia and New York Board of Brokers.

In the District Court of the United States for the Eastern District of Pennsylvania.

In the Matter of CHARLES T. YERKES, Jr., in Bankruptcy.

Before Joseph Mason, register in bankruptcy, on May 23, 1884, 2 p. m., appeared John Sparhawk and J. Davis Duffield, assignees, and their counsel, George Junkin, Esq., and Charles T. Yerkes and his counsel, Frank P. Pritchard, Esq.

CHARLES T. YERKES, being duly sworn, was examined by Mr. PRITCHARD as follows:

Q. The two pamphlets which I now produce are the constitution and by-laws of the New York Stock Exchange and the Philadelphia Stock Exchange respectively, are they not?

A. Yes, sir.

Q. Are the articles on membership and insolvency, on the election and readmission of members, and on the transfer of memberships the same as they existed in the constitution and by-laws at the time of the adjudication and the time of your discharge in bankruptcy?

A. In relation to the New York Stock Exchange membership the pamphlet produced contains the rule which was in force at
47 that time in the Philadelphia Stock Exchange. The rule differs somewhat. The rule at the time of my insolvency

in 1871 provided that a member should be balloted for by the members of the stock exchange. Five black balls defeated him. In the present rule the provision is that a reinstatement shall be done by a vote of the governing committee, five black balls defeating him. In all other respects the rule was the same.

Q. The rule as to the transfer of membership was the same?

A. Yes, sir.

Q. Your answer comprehends the articles which I have copied out here on the insolvency of members, the admission of members, the readmission of members?

Page referred to marked Exhibit A.

A. Yes, sir.

Q. At the time of the adjudication in bankruptcy were you indebted to members of the Philadelphia Stock Exchange on any unsettled contract; and, if so, to what amounts?

A. I was, to the amount of $21,842, as follows: To J. K. Wildman, $1,190; Kurtz & Howard, $350.25; T. S. Young, $400; D. C. W. Smith & Co., $1,077.67; C. B. Keene, $5,254.50; Sailer & Stevenson, $395.50; Dunn Bros., $693; R. Ellis & Co., $348.24; D. C. W. Smith & Co., $339.58; L. Seal, $570; Narr & Ladner, $131.20; W. H. Bacon, $341.25; P. H. Brice & Co., $2,535.18; Austin & Oberge, $3,551.02; E. W. Clark & Co., $4,604.67.

Q. What was the market value of a seat in the Philadelphia Stock Exchange at the time of the adjudication in bankruptcy?

A. About twenty five hundred dollars. I don't think it was quite that much. I think two thousand dollars would be a maximum price for it at that time.

Q. At the time of the adjudication in bankruptcy were you indebted to members of the New York Stock Exchange on any unsettled contract; and, if so, to what amount?

A. Yes, sir; I was, to the amount of $8,522.99, as follows: Drexel, Morgan & Co., $1,537.46; Theo. Berdell, $643.59; John B. Bouvier, $3,341.94.

Q. At the time of the adjudication in bankruptcy what was the value of a seat in the New York Stock Exchange?

A. About four thousand dollars.

Q. Since the adjudication in bankruptcy have you, with your own private means and by your own personal exertion, unassisted
48 by the assignees, made a settlement with the twenty-one thousand dollars' worth of creditors in the Philadelphia Stock Exchange and the eight thousand dollars in the New York Stock Exchange?

A. Yes, sir; with all of them.

Q. Have you, in consequence of such settlement, been readmitted to membership in both exchanges?

A. Yes, sir.

Q. From the time of the adjudication in bankruptcy have you held open and adverse possession of the seats or memberships in both exchanges and paid the dues and charges and assessments thereon?

A. I have held undisputed possession of them, paid all the charges, expenses, dues, assessments, etc.

Q. Can you state the amount of annual dues in the Philadelphia Stock Exchange?

A. There have been not only dues, but fines and other charges. They would average, I suppose, at least seventy-five dollars a year.

Q. What has been the amount paid in the New York Stock Exchange?

A. Much heavier. I should think it would average something over one hundred and fifty dollars a year.

Q. Did you pay these dues, charges, and assessments for the period during which you were suspended from active use of your seat on account of your insolvency, as well as the period subsequent to your settlements?

A. Yes, sir; I was compelled to do that, or else the seat would have been forfeited to the stock exchange.

Q. Have the assignees ever done or offered to do anything towards the payment of any of these dues, charges, or assessments or towards keeping the membership alive in either stock exchange?

A. Never.

Q. During the twelve years and over in which you have kept the membership in each exchange alive, as you have testified, has the value appreciated; and, if so, to what extent?

A. Very materially appreciated. Memberships in the New York Stock Exchange to-day are worth, I suppose, twenty thousand dollars, and in the Philadelphia worth four thousand dollars.

Q. When was the first time that the assignees ever re-
49 quested you to execute any conveyance or made any effort to obtain the memberships since the adjudication in bankruptcy?

A. Within about six months of this present time.

Cross-examined by Mr. JUNKIN:

Q. Did not assignees shortly after their appointment send formal notices to both of these exchanges of the proceedings in bankruptcy and their appointment?

A. Not to my knowledge. In fact, I asked one secretary whether he had ever received any notice, and he positively denied ever receiving any communication. That was Mr. Johnson, secretary of the Philadelphia Stock Exchange. I haven't had any communication with the secretary of the New York Stock Exchange regarding the matter.

Q. How much in money did you pay in settlement of the debts due in the Philadelphia Stock Exchange?

(Objected to by Mr. Pritchard as immaterial.)

A. Between sixteen and seventeen thousand dollars.

Q. You mean by that in cash?

A. In cash.

Q. How soon after the adjudication had you accomplished these

payments and been restored to your membership, about? Of course, I don't mean accurately.

A. The payment was made about two years ago and the readmission was made shortly afterward. I can't tell the exact dates.

Q. Between the date of the adjudication and your readmission to that exchange you made no use of your seat or membership there, or did you?

A. I did not. I had no need of using it, from the fact that my partner was a member of the stock exchange.

Q. How much did you pay in cash in settlement of your indebtedness in the New York Stock Exchange?

A. That would be a very difficult matter for me to say. The settlement I made with Berdell was by paying him the amount of his claim in cash. With Bouvier I agreed to pay him in commissions as much as his claim would be, and continued to do business with him in preference to others. The commissions amounted to many thousand dollars more than his claim. Drexel, Morgan & Co. I did various services for in the way of buying stocks, loaning money, etc., without charging them, letting whatever it might be worth go against the indebtedness I might owe them.

Q. Apart from these you have named, what cash did you pay?

A. That was the only cash.

Q. If you hadn't paid the commissions, which you did do, to Bouvier, isn't it likely you would have paid them to somebody else—some other broker?

A. I might or I might have not.

Q. The chances were that you would?

A. No; not the whole of it. I could have made an arrangement with a broker, member of the stock exchange, to do business for me pending my suspension from the floor of the exchange, paid him less than one-third of what I paid Bouvier. When I started doing business with Bouvier I preferred giving the full commission because I wanted to liquidate his debt. After fully liquidating the debt I continued to do business with him.

Q. I understand you, Mr. Yerkes, that these New York debts of which you have spoken were all such a claim against your membership in that exchange that you could not have used the membership without paying them?

A. Either of these three firms that I have mentioned had the right to demand the sale of my seat at any time and take the proceeds of the sale of that seat or membership for the payment of their debt.

Q. How long ago was it that you settled the New York debts and resumed your membership there?

A. Well, the debt was settled several years ago; I can't say exactly when; but I remember I resumed my privilege to the floor, which is merely what a member is suspended from when he fails, about a year ago—something less than a year ago.

Q. About how long before that was it that you had settled with these creditors?

A. Well, I suppose it was within three or four years after the adjudication.

Q. That you settled with all of them?

A. Yes.

Q. Then you settled with the New York creditors several years before you settled with the Philadelphia creditors?

A. Well, I paid the Philadelphia creditors money right down. I had no arrangements with any of them.

51 Question repeated.

A. Yes, sir.

Q. And from the time of your adjudication as a bankrupt until you had made the settlement referred to you did not use the membership in either of these boards, as I understand you?

A. I was never inside the stock exchange in either place; never did any business in either of the stock exchanges from the time of my suspension until my reinstatement.

Q. Since your reinstatement in the New York Stock Exchange you have used the membership for the purposes for which it is ordinarily used?

A. Yes, sir.

Q. As I understand you, you have not used the Philadelphia membership at all since your reinstatement?

A. That is a difficult question for me to answer from the fact that I can say yes and I can also answer no. My partner is a member of the Philadelphia Stock Exchange. He can, therefore, have his stock bought and sold irrespective of me, and while I hold a membership in the Philadelphia Stock Exchange, yet even if I didn't hold it our business would go on just the same.

Q. Using your partner's membership to accomplish the desired result?

A. That is it.

Q Between the time of your adjudication and your settlement with the creditors of these two exchanges did these creditors at any time enforce or attempt to enforce their claim against your membership?

A. Mr. Berdell spoke to me about the matter several times, and I requested him to wait—give me more time—so that I could raise the money to pay him. He was the only one that troubled me.

Q. Did any—and which—of these creditors prove their claims against your bankrupt estate?

A. J. V. Bouvier, Drexel, Morgan & Co., both proved claims. Mr. Berdell did not. That relates to the New York Stock Exchange. In Philadelphia they all proved their claims and received their dividends, I suppose.

Q. Do you mean your answer as to the attempts of any one to trouble you about your membership to refer to both the Philadelphia and New York Exchanges?

52 A. There were some of my creditors, members of the Philadelphia Exchange, who urged me to have my membership sold, but I asked for time to fix things up; showed them that they would not realize much even if the membership was sold; told them

the day might come that they would get more by waiting, and after the lapse of some time the thing was given up entirely.

Q. In neither exchange did your creditors, members, attempt to sell your membership, in order to secure payment of their respective debts, from the time of your adjudication down to the time you settled with them, as authorized by the rules of the exchange?

A. They made no more than threats. The attempt would have been equal to the sale, because all they would have to do would be to make the application for the sale of the membership, and it would have been sold.

Q. But this never was done in either case?

A. But this was not done.

Q. Were you formally suspended in both exchanges?

A. Yes, sir.

Re-examined by Mr. PRICHARD:

Q. These dues, assessments, and charges, were they paid annually during the time of your suspension?

A. Paid annually.

Q. Was it by your exertions and personal solicitation or by any effort of the assignees that the rule requiring the sale of the seat of a suspended member in one year was not enforced in each exchange?

A. My personal exertions entirely.

Q. For your benefit?

A. And for my benefit.

By Mr. JUNKIN:

Q. Did you ever ask the assignees, at any time after you had paid the dues, assessments, or fines on these memberships, to reimburse you for what you had paid?

A. I didn't, for the reason that the assignees—that I judged from conversation with the assignees, that I had several times after the adjudication, that they didn't suppose that they had any rights in the membership of either of them. That seemed to be the understanding between us.

Q. You knew from them, did you not, that they had sent formal notices to each of the exchanges? Did they not tell you so at the time or about the time?

53 A. I have no recollection of their telling me or sending any notice to the exchanges, but I do remember several conversations in which it was generally conceded by the assignees that the assignees had no rights in the membership—my membership in the stock exchange—and I had no idea that they ever expected to make such a claim.

Mr. Pritchard offers in evidence the constitutions and by-laws of the two exchanges.

JOHN SPARHAWK, being duly affirmed, was examined by Mr. JUNKIN as follows:

Q. Give us your recollection as to your interviews with Mr. Yerkes in regard to the membership in those exchanges in the early part of your administration of the estate.

A. I have no recollection that any mention was made or that there was any conversation between Mr. Yerkes and myself on the subject of the two seats or privileges until after we had formally given notice to the New York Stock Exchange and the Philadelphia Board of Brokers asserting the claim of the assignees to the value of these seats in the spring of '72.

I cannot fix any date in my recollection as to conversation with Mr. Yerkes or as to the place, but that after such notices were given the matter was the subject of conversation between us, and that he was informed by me that our action had been by advice of counsel. In a subsequent conversation or conversations, as nearly as I can remember, I stated to him that, having given the notification, we had rested there and at present would take no further action until advised by counsel to do so. I recall that there was reference made to a certain decision of the Supreme Court of the United States that had been appealed from San Francisco, California, and which the Supreme Court had passed upon perhaps two or three years after our appointment. There was no conversation that I know of during an interval of four or five years from that time on this subject until about the time that Mr. Yerkes has referred to in his testimony, which, as near as I can remember, was about November, 1883, when the inquisition into the value of these seats or privileges was revived under or following a decision of Judge McKennan defining and limiting the scope of the decision of the Supreme Court of the United States on the San Francisco case.

There was an understanding between us that our action,
54 further than having given the notices to the presidents of each of the two boards, was for the time being suspended, and that the decision in San Francisco case had been brought to our notice and had influenced us to our non-action—to our non further action—not, however, intimating in the remotest degree that our notices to the presidents of the two boards had been withdrawn or modified.

Prior to the notices the matter was the subject of frequent consultation with our counsel in the first few weeks following our appointment.

I now verify, by reference to the assignees' letter book of November 19, 1883, that in a communication addressed to Nicholas Brice, Esq., president of the Philadelphia Board of Brokers, we referred to our notification, our first notification, of our claim to the seat in that board as on or about January 25, 1872, which was within ten days, if I remember rightly, of our appointment as assignees. On the 29th day of May, 1873, the assignees addressed a letter to Henry G. Chapman, Esq., then president of the New York Stock Exchange, notifying him that it was our duty to realize fully on the seat of

Charles T. Yerkes, Jr., and requesting him to communicate through the then secretary the form, if any, prescribed by your rules for transfer and sale. I find a copy of our letter to this effect May 20, 1873, in our letter book, page 210:

"MAY 29, 1873.

"Henry G. Chapman, Esq., president New York Board of Brokers.

"SIR: It becomes our duty, under our appointment as assignees in bankruptcy, to realize the value of the seat in your board standing in the name of Charles T. Yerkes, Jr., and we have to ask of you to communicate through your secretary what form, if any, is prescribed by your rules for transfer or sale.

"Asking the favor of an early reply, I am, for myself and my colleagues, assignees of Charles T. Yerkes, Jr., in bankruptcy,

"Very respectfully yours,

"JOHN SPARHAWK."

This letter was written, as I believe, under instructions and dictation of counsel, because the notice sent to the same board at the same time that the Philadelphia board had been notified, about January 27, 1872, had not been responded to. This was a second communication, as I remember, to the New York Exchange.

55 Cross-examined by Mr. PRITCHARD:

Q. What is the date of your appointment?

A. Tuesday, January 24, 1872.

Q. You were aware at that time, from your long business experience, that upon the insolvency of a member of the stock exchange his seat was liable to be sold for the debts due to the other members of the exchange?

A. I cannot answer that question as to how far back my knowledge of that particular rule of the stock board relates. I don't think I knew it or ever heard of it until I was made assignee of this estate.

Q. Immediately upon the appointment of the assignees or shortly thereafter they made inquiries, did they not, as to the character of these memberships and as to the fact that Mr. Yerkes was indebted to the members of the exchange?

A. My answer to that is that we had the schedules of indebtedness, which recited all the creditors sworn to and their places of residence, and those whom we recognized as brokers by familiarity with names we knew of, but neither of the New York names were known to us as brokers until we learned that they were from our relation to this case, excepting the house of Drexel, Morgan & Co. My own impression is the board of assignees, who met every day at noon and were in session generally from one to two hours, and who met their counsel every day, often twice a day—that the question of the value in these seats were immediately the subject of very free discussion between ourselves and our counsel, and we sought their advice in that respect, as we did in regard to everything else, so as to be up to the point of responsibility and duty in everything.

Q. Do you not recollect that the rules of the stock exchange were a matter of investigation and discussion at these consultations?

A. It happened that one of the members of our board of assignees, Mr. George J. Cross, being out of business, was very familiar with the customs and rules of the board of brokers, and, as I remember, he was particularly earnest and solicitous in seeking and directing our attention to the subject of these seats and in seeking the advice of counsel as to what our duty was in the premises. This is a general recollection of that which occurred twelve years ago.

Q. The notices which you sent to the exchanges on or about January 25, 1872, were merely notices of your appointment as assignees, were they not?

56 A. That form of language referred to in the letter of November 19, 1883, was furnished by our counsel. My impression is that the common, ordinary notice that is given to debtors, and that we were required to send to all debtors, was inclosed in a direct communication to the presidents of the stock exchange, both in New York and Philadelphia. It now flashes across my mind that our knowledge that Mr. Yerkes had a seat in the New York board did not come to us until some weeks after our appointment as assignees, and that the announcement was first made to the board of assignees by Mr. Gross, one of our members, and thereupon we followed with the same form the same notice that we had sent to the Philadelphia Stock Exchange.

Q. You think now that the fixing of the same date, January 25, 1872, as to both boards is an error?

A. It has not the force of a recollection with me. I am dependent on minutes and copies of letters, so far as letters were copied in the first few days of our administration.

Q. Every letter written by the assignees you have a copy of?

A. Not in the letter book. The letter book shows that the first letter copied was on the 10th of February. There may be loose press copies of letters antecedent to this date.

Q. If you wrote a letter to either stock exchange you kept a copy of it, did you not?

A. We did.

Q. And from the time that you kept a letter book that copy, if taken, would be in the letter book?

A. That copy should have been in the letter book if it hadn't been omitted in copying by the copying clerk, which was by no means an uncommon thing, because our work was prolonged from two to three hours after dusk, at that time, nearly every day.

Q. Have you produced a copy of the letter of May 29, 1873, which is the only copy of letter prior to 1883 in any way notifying either exchange that you desired to realize from the memberships of Mr. Yerkes? Have you a distinct recollection of the contents of any other letter prior to 1883 to either exchange containing any similar notice?

A. I have a recollection that in November last—the time you speak of—I verified, by reference to minutes and the letter book, by

a most exhaustive search, that we had written—that I had
57 written, or that we, the assignees, had written—to both boards of brokers, notifying them of our claim to these seats. As to the language used—as to the precise language—I cannot recall; but I suppose that by as exhaustive search as I then made, which cost me some hours, I could bring up the evidence of both these things having been done in each case by advice of and under the instruction of counsel.

Q. Have you a distinct recollection of a letter notifying the exchanges of a desire on the part of the assignees to realize from these memberships?

A. I have a recollection of a letter asserting our claim in such manner and with such elaboration as we were instructed by the counsel to use.

Q. You were, in substance, as a result of the many conversations which you had with your counsel prior to your notification to the stock exchanges, advised by your counsel that these memberships could not be so used by the assignees as to result in any pecuniary profit to the estate, were you not?

A. We had not many conversations; but we, perhaps three or four times, brought to the notice of our counsel the question of value in these seats and what was our duty and responsibility in the case, and I have no recollection that we were ever advised by our counsel as suggested by the question until we ourselves—myself—brought to the notice of counsel the decision of the Supreme Court of the United States in the San Francisco case by exhibiting to him the report of the case as it appeared in the daily papers, as I understood it was an open or undetermined question during all that intervening time.

Q. Did the assignees, between the time of their appointment and the time of your hearing of this decision of the Supreme Court of the United States, suppose that they could realize for the estate any pecuniary profit from these memberships; and, if so, why did they not take any steps for that purpose except the simple notice to the boards?

A. We knew from the proofs of debt before us that there was a very large indebtedness to the members of the Philadelphia Stock Exchange, largely in excess of our expectations of being enabled to pay a dividend and largely in excess of what we knew to be the then current value of the seat in the Philadelphia Stock Board.

Question repeated.

58 A. We had an opinion, I recall, from counsel that *while* in all probability the rights of members of the exchange would have priority over our claim as assignees, so long as they could be classed under the rules of the board.

Q. Did you suppose at that time that you could from either membership realize any pecuniary profit to the estate?

A. We were in a condition subject to the developments of circumstances. We referred the question to counsel—first to Wm. A. Porter and George M. Dallas, and subsequently to George Junkin,

Esq., and whatever opinion we had was as we were from time to time instructed or advised by them.

Q. I must insist on an answer to my question as to your recollection.

A. We certainly could not have supposed that we could realize anything from the Philadelphia seat, because we had not the slightest expectation of paying a dividend of over thirty-five per cent., and we knew that a seat at the Philadelphia board, as we understood, was worth about fifteen hundred to two thousand dollars; and if the rights of members of the stock board had precedence, as we were advised by counsel, over the right of the assignees, we could not expect to realize anything from the Philadelphia seat.

Q. Now, as to the New York seat?

A. As to the New York seat, I am not aware that we had any opinion until we were advised by our New York counsel, whom we consulted in November last.

Q. If you were uncertain as to whether you could not realize something from the New York membership, why was it that you took no steps to so realize?

A. We were engaged for six or seven years in litigation with H. L. Horton & Co., New York brokers, creditors of Yerkes, who had laid a foreign attachment and had realized upon it, and whom we followed into the general court. We followed through the minor and into the two appellate courts of New York and defeated them, and recovered finally the full amount—the full sum that they had realized by their attachment. I don't mean an attachment of this seat. We were also engaged in litigation for several years with Drexel, Morgan & Co. and Drexel & Co., with the question undetermined whether these two firms were one house or two distinct houses, and as to whether the New York house was entitled
59 to reimburse itself for a very large amount (about fifty-six thousand dollars) out of collaterals in the possession of Drexel & Co., a large portion of which they obtained by the purchase of a loan of S. & W. Welsh of one hundred and eighty-five thousand dollars, with a margin of collaterals over and above the loan of about sixty thousand dollars.

Question repeated.

A. For the reason, in chief, that, following the San Francisco decision, which we supposed ruled this as well as the Philadelphia case, we did not propose to take any steps until we learned of Judge McKennan's decision, brought to our notice by Mr. Junkin, our counsel, last fall.

Q. Wasn't your failure to take any active steps to realize anything from the membership, between your appointment and the decision in the San Francisco case, due to the fact that even before that decision you supposed the law to be that such memberships could not be made available as part of the assets of the estate?

A. We were instructed by counsel that they could not be made available so long as they were liened or incumbered with an indebtedness within the guilds to which Mr. Yerkes belonged.

Q. Did you receive any answers to your notices to the stock exchanges?

A. To both of them. I will produce them. We have answers from both boards as to our communications last November, both of which had recited the former notification, and I think we got a reply from the Philadelphia board, either written or by a personal call upon the president of the Philadelphia Stock Board, in 1872, but none from the New York board.

Q. Did you take any steps whatever, except these notices that you have testified to, towards realizing any profit from the memberships prior to 1883?

A. We did not, having been advised that we had covered the point by our notifications.

Q. You did not pay any dues or assessments upon them?

A. We did not.

Q. Between 1873 and 1883 did you ever say to Mr. Yerkes that you intended to take steps to compel a sale of his seats?

A. I cannot answer as to as far back as 1873. There were repeated conversations between myself and Mr. Yerkes—perhaps between the other assignees and Mr. Yerkes—as to whether the assignees had any rights in these privileges, with always this agreement between us, he always asserting that we had not, while, without any acerbity on my part, I have always asserted that there might be.

60

Q. But in the five years prior to 1883 there were no conversations?

A. I think it likely that in the five years prior to 1883 there were no conversations. I will say there were none in three years prior to 1883 between myself and Mr. Yerkes.

JUNE 2, 1884—3.30 p. m.

Present: Messrs. Junkin, Pritchard, Sparhawk, and Duffield.

Mr. Sparhawk produces copies of letters of May 29 and June 12, 1873, and states that he has made further search and thus far has been unable to find copies of any correspondence of the assignees for the time between their appointment and the first page of the letter book produced at the last meeting, and has not found copies of the letters sent to the two exchanges, and will make further search, and, if found, produce them.

He produces also letters from the stock exchanges, dated December 8th and 22d, 1883.

J. DAVIS DUFFIELD, one of the assignees, being duly sworn, was examined by Mr. JUNKIN as follows:

Q. State in your own way your recollections as to the interviews you had with Mr. Charles T. Yerkes in regard to the seats in the New York and Philadelphia Exchanges.

A. The matter of these seats came up very early in the administration of this estate and Mr. Yerkes quite frequently consulted with the assignees about them, or rather inquired of the assignees as to their movements in regard to them. He, of course, always pooh-

pooh-ed the claim of the assignees to these seats, and stated that they could never get anything out of them—

We always—at least I remember Mr. Sparhawk and myself—representing to him that we had, as we thought, a perfectly good and valid claim in them and upon them. The question always was how to get at their value or to realize their value or any part of their value for the estate.

61 Mr. Yerkes, at one time in particular which I remember, before the San Francisco case, stated to Mr. Sparhawk and myself—I am quite sure Mr. Sparhawk was present; at any rate, it was in Mr. Sparhawk's office, where Mr. Yerkes was—that he had received some notice of dues to one of the boards—I don't remember which, but think it was the Philadelphia board—or assessments, or some claim anyhow which had been made and sent to him, and he brought the matter to—I can't say our attention. I know he brought it to mine and said, "What are you assignees going to do with the claim made by the stock board for payment?" Well, I remember very distinctly saying to him that as the claim had been made upon him that I thought he would be the proper party to pay it, and I then said, in the presence of Mr. Sparhawk—his presence in that part of it I remember—that any claims of that character which Mr. Yerkes would pay would be recognized by the assignees as properly to be refunded to him out of anything the assignees might hereafter realize for the seats in the boards.

Now, I don't remember distinctly what Mr. Sparhawk said in that connection.

My impression is that he acquiesced in what I said, and I know that Mr. Yerkes added at that time "that you will never be able to get anything out of them." I said I didn't know that we would, but that would be a matter for after-ascertainment. That interview, in particular, I remember, and the matter of the stock-board seats was frequently mentioned to me by Mr. Yerkes. When I say frequently I don't mean it was done every week or two or every month or two, but in the course of three or four years it was frequently mentioned, and the assignees always maintained their right to the seats, subject to his right of reimbursement for current payments that they otherwise would have had to pay themselves to keep the title valid to the seats.

This claim made by the board, whatever it was, was not the debt of a creditor of Mr. Yerkes, and I don't remember as to that class of claims upon the seats, if they be so considered as ever having been the matter of any special conversation or agreement between the assignees and him.

The matter of the claims of the creditors in the board upon the proceeds of the seats was frequently mentioned between Mr. Sparhawk and myself.

62 (Objected to by Mr. Pritchard.)

I don't remember of any communications with Mr. Yerkes about it. The right of the assignee to these seats and the proceeds of their sale in some shape—in some manner to be realized—was always

recognized by the assignees as undoubted down to the time of the decision, or the publication of the decision, I think, first in the newspapers, of the San Francisco board case.

After the decision came out it was considered by ourselves and by our counsel as very much against our rights. Down to the time of the decision of Judge McKennan in the produce board case we considered our right to any proceeds from these seats as very much in doubt. After Judge McKennan's decision, whose construction of the San Francisco board case was different from that our counsel and ourselves had put upon it, we recognized the necessity of proceeding in some shape to realize what there should be in those seats of property assets available to the estate.

Q. What notices, if any, have you received from the creditors of Charles T. Yerkes in either of these stock boards that they would not draw their dividends out of the estate?

A. There has been no notice at all received by us, and the dividends have been taken by the creditors on their original proofs, with the exception perhaps of Berdell, whose debt I do not think was proved against the estate. The dividends have been drawn by Drexel, Morgan & Co. on their proof, and my impression is that the later dividends only of Bouvier & Co. have been drawn by Mr. Yerkes. We directed notices to be sent to these stock boards of our claim of title to these seats in the first instance. I have not got the papers showing that was the point to direct to the stock board to indicate to them our claim of title to these seats. Exactly in what shape it was done, whether by giving notice of the assignment in bankruptcy or more especial claim, I don't now remember, but I do know that there was a later notice given, and, my impression is, given to both boards, because of the conversation which I had with Mr. Sparhawk, my co-assignee, who had an impression that it was only necessary to give it to the New York board, but I don't know that I insisted upon that notice—that subsequent notice which was given to the New York board—being given to both the Philadelphia and New York boards, and I presume that it was done.

Cross-examined by Mr. PRITCHARD:

63 Q. What was the date of the conversation with Mr. Yerkes at which he showed you the notice of a claim by the New York or Philadelphia Stock Board for assessment or some other charge?

A. I don't know that he showed me the notice. I don't remember showing me the notice, but he mentioned the fact of his having received the notice of dues or claim from one of the boards. My impression is it was the Philadelphia. I don't know the exact date, but it was certainly within a couple of years of the assignment being made to us.

Q. Did he make any reply to your suggestion that his payment would be credited other than that you would get nothing out of the seat?

A. I don't remember any further reply, and I don't remember the exact language used by him, but it was, anyhow, to the effect

that he did not consider that our claim as assignees to these seats amounted to anything.

Q. Between the decision in the matter of the San Francisco board case and the decision in the matter of the produce exchange did you have any conversation with Mr. Yerkes about these seats?

A. I think that after the decision in the San Francisco board case came out that that decision as affecting the question was talked about with him.

Q. That was immediately after it came out?

A. I think immediately after it came out.

Q. From that time out did you ever have any conversation with him?

A. I don't remember any conversation with him, after that conversation with him upon that decision, upon the subject.

Q. Did the assignees, after their assignment and up to the filing of the present petition, do anything whatever to realize upon these seats or to prevent their sale by the respective stock boards, except the giving of the notices to which you have already referred?

A. I think that the counsel in New York—at what exact time I do not know—was directed to confer with the officers of the stock board in New York for the purpose of taking such steps as might be advisable to realize upon that seat. I think one of the assignees—that is, Mr. Sparhawk—was personally, directly or indirectly, in communication with the officers of the stock board here.

64 Q. Refreshing your recollection by the letter of June 12, 1873, to Mr. McMichael, the communication with your New York counsel was in June, 1873, was it not?

A. No, I think it was subsequent to that, but exactly when I don't know.

Q. Were any steps taken in consequence of either your communication with your New York counsel or the personal communications of Mr. Sparhawk, which you referred to?

A. The assignees consulted their attorneys.

Q. Were any steps taken for the purpose I have alluded to?

A. The prevention of the sale on the claims of creditors in the stock board was not considered a necessity by reason of the fact that it was understood that Mr. Yerkes wished to retain in the boards his seats, and he himself, it was known, was preventing, by his own exertion, any sale of these seats by the creditors in the boards, because he had informed us of that. We had talked it over. His efforts to get back in the board here in Philadelphia we were cognizant of from our conversations with him. We did not authorize him to represent us in anything which he did in the matter of preventing, but we were cognizant that he was preventing the sale. I think that one of the creditors, probably as the result of his communications with us, did take some steps to prevent the sale of the seat in New York.

Q. What were those steps, and who was the creditor, and how do you know?

A. I think so from our interviews with the creditor, Walter Mc-

Michael. That is my impression. I am not aware what steps he took in the matter.

Q. What led you to think he took any steps?

A. The fact of his anxiety in the matter. I think from the interviews which took place between him and the assignees about this time.

Q. What did he say in these interviews that led you to think that he took steps to prevent the sale of the seat?

A. Well, his anxiety that the assignees should have the assets—these seats as the assets; and his interest in the matter, because of his being a creditor.

Q. He requested you to sell the interests, did he not?

A. No; he wasn't urging us to sell them.

Q. Was he not trying, on your behalf, to effect some arrangement by which they could be sold?

65 A. That may or may not be. The assignees were very anxious that they should be sold, and they recognized further that these claims of the members of the board were an obstruction to the sale of the seats.

Q. Did Mr. Yerkes ever say to you that he was making any efforts to prevent a sale of the seats in order that the assignees might realize something from them?

A. No, he didn't; because Mr. Yerkes was always more anxious that he should realize something than that the assignees should do so. I don't think any conversation of that kind ever took place.

Q. Then, if I understand your answers correctly, the assignees did not, in point of fact, take any steps either to realize from these seats or to prevent their sale except the notices you have testified to?

A. I don't know what the interviews between Mr. Sparhawk and Mr. McMichael may have amounted to. I was very well satisfied myself that the seats would not be sold by any person inside the board.

Question repeated.

A. Steps were taken all the way along to keep posted on the status and not to let them slip away from the assignees or let any of their rights slip away; but if you mean by any steps whether they were ever offered at sale, I am not aware that such was the case.

Q. I mean by steps anything whatever that was done by the assignees to realize upon these seats or to prevent their sale by the boards, and I ask you now to particularly enumerate the things which you have called steps in your last answer.

A. After the discussion in the San Francisco case down to the time of the decision of Judge McKennan we thought our rights were in such doubt that it was not advisable to offer these seats for sale until our status towards them should be more definitely determined, and I may say that we were never aware of any payment by Mr. Yerkes of the Drexel, Morgan & Co. debt. The steps to preserve our right to these seats, so far as we could do that, consisted in keeping ourselves posted as to the status of the seats.

Q. Please state, confining yourself strictly to your own knowledge,

what steps were taken by the assignees to keep themselves posted since the giving of the notices you have referred to.

66 A. Mr. Sparhawk and myself, at our conferences, frequently brought up the question of the status of the seats in New York and Philadelphia boards, and when the Bouvier claim went into the control of Mr. Yerkes we considered that that was one impediment out of our way to get at the New York seat, and, as I have said, the payment of the Drexel, Morgan & Co. debt by Mr. Yerkes was unknown to us, and we supposed that it had not been paid. That is my case, anyhow, and it is an impediment that we supposed was in the case that has been removed. We ascertained, a considerable time before Mr. Yerkes paid the members of the Philadelphia board here, that he was going to do that for the purpose of clearing the title to the seats. We were aware of frequent efforts on his part to be readmitted to the Philadelphia board here, which were not successful.

Q. Isn't it a fact that from the time of the notices down to the time of the San Francisco board decision you believed that nothing could be realized to the estate from the sale of the seats in either board?

A. No; that is not a fact. We believed that something could be realized, provided we obtained a purchaser for these seats who would be agreeable to these stock boards.

Q. Why, then, for a period of three or four years, did the assignees do nothing to obtain such a purchaser or to make a sale of these seats, if they considered them valuable assets of the estate?

A. Well, there was considerable done in the way of efforts to obtain a purchaser. There was nothing done in the way of an offer at public sale, but Mr. Sparhawk was in communication with different members of the stock board for the purpose of getting these seats in such a shape that something could be realized.

Mr. Pritchard calls for the production of all the correspondence between the assignees and the members of either stock boards referred to by the witness.

Q. Please give the names of any members of the stock board who were seen by the assignees or communicated with for the purpose of purchasing these seats.

A. I have not said that any one of them was communicated with for the purpose of purchasing these seats.

Q. What efforts were made to obtain a purchaser between the notice which you gave the boards in 1872 and the San Francisco decision?

67 A. Well, the efforts were made more by Mr. Sparhawk than by myself. I did not myself go to see any of them because there were inherent difficulties in the matter that I recognized, and these stock-board seats have been very much of a white elephant in the hands of the assignees without knowing the best way to get rid of them.

EXHIBIT A. J. M., R'g.

The Philadelphia Stock Exchange is an incorporated association, the government of which is vested in a governing committee. There is a written constitution and by-laws.

The present constitution was adopted April 5, 1880.

ARTICLE XI.

Membership.

SEC. 1. Every applicant for membership must be at least twenty-one years of age.

SEC. 2. The initiation fee of members admitted by election shall be $1,000, and of those admitted by purchase, $250. In all cases where initiation fees shall not be paid within five days after the election and proper notification by the secretary (except in cases of sickness or absence from the city) such election shall be void.

SEC. 3. Any member wishing to sell his membership shall have the right to do so, provided he has no unsettled contracts with or claims against him by any member of the stock exchange for transactions arising in or relating to the business of banking or a stock or exchange broker; but where the arbitration committee shall determine that any contract or claims exist the governing committee may, except in cases of insolvency, refuse to permit the seat to be sold until such claims or contracts are, in its opinion, satisfactorily settled.

The proceeds of the seat, if sold, shall, after deducting all charges due to the exchange (to be determined in cases of controversy by the arbitration committee), belong to its owners, creditors being members of the exchange, in proportion to the amount of their respective claims determined by the arbitration committee, as hereinbefore provided in sec. 4, article V. The claims of members so ascertained shall be paid in full, and what remains, if anything, shall be paid to the owner.

68 ARTICLE XII.

Insolvency.

SEC. 1. Any member who fails to comply with his contracts or who becomes insolvent shall immediately inform the president or chairman of the exchange of the fact, whose duty it shall be to give notice forthwith of the failure of such member, and such notice shall forthwith work a suspension of the insolvent from the privileges of the exchange unless a settlement is made as hereinafter provided. In case of the neglect of the insolvent to make such report to the president or chairman it shall be the duty of any member having knowledge of the fact to report the same forthwith to the governing committee or to the president or chairman, who shall thereupon appoint a committee of three members to inquire into the fact and

report thereon, without delay, to the stock exchange; and if said committee report the charge to be true and no appeal from the said report be taken within seven days—or where an appeal having been taken the report shall have been confirmed by the governing committee—said member shall from that time be held to be suspended.

SEC. 3. Any member who shall be declared a bankrupt shall *ipso facto* be suspended from the stock exchange, but a suspended member presenting a certificate of discharge and the United States bankrupt law becomes eligible under the rules for reinstating suspended members.

SEC. 4. If any suspended member fails to settle with all his creditors within one year from the time of his suspension his membership shall be sold by the secretary and the proceeds, after deducting all charges due the exchange (to be determined in cases of controversy by the arbitration committee), shall belong and be paid *pro rata* to his exchange.

SEC. 5. On an application of readmission a suspended member may be restored to his membership, provided his name shall have been acted upon as hereinbefore provided in section 3, article V, by the committee on admissions. It shall be the duty of that committee to ascertain that the applicant has settled and arranged his affairs to the satisfaction of his creditors, and that his present situation affords reasonable security in future transactions. * * *

69 ARTICLE V.

SEC. 3. A committee on admissions, consisting of three members, to whom all applications for membership, transfer of membership, and readmission of suspended members shall be referred. It shall be their duty to inquire into the general standing of the applicant and make a report thereon to the governing committee within one month of the presentation of the application. Until the committee make a report favorable to the admission of the applicant he shall not be voted for as a member; but upon the written application of seven members of the governing committee to the president, made within five days after the committee's report has been presented, the governing committee may, by a two-thirds vote, reverse the report of the committee, and such reversal shall have the same effect as if the committee's report had originally been favorable. If the report be favorable the name of the candidate shall be posted in the stock exchange, and notice given that a ballot will be taken at the next stated meeting of the governing committee, in order that every member of the exchange may have an opportunity of objecting to the candidate's election; such objection to be in writing to the president of the governing committee.

The election of members shall be held by the governing committee, but no election shall be valid unless at least eighteen ballots are cast, and if five ballots are cast against a candidate he shall be declared not elected.

70 The New York Stock Exchange is an incorporated association, the government of which is vested in a governing committee. The present constitution was revised September 15, 1878.

ARTICLE IV.

Standing Committees.

A committee on admissions, to consist of fifteen members, to whom shall be referred all new applications for membership and all applications of suspended members for readmission. * * *

Two-thirds of the committee approving, the candidate shall be declared elected or re-elected to a membership in the exchange.

It shall also be the duty of this committee to consider and dispose of all applications for the transfer of membership under article 13 of the constitution.

ARTICLE X.

Applications for Membership—Eligibility—Initiation Fee.

SEC. 2. Every applicant for membership must be at least twenty-one years of age and a citizen of the United States.

SEC. 3. The initiation fee of members admitted by election shall be $20,000, and that for membership admitted by transfer shall be $1,000.

In all cases where the initiation fee shall not be paid within five days after the admission of a member and his notification by the secretary, such admission shall be declared void.

ARTICLE XIII.

Transfer of Membership.

Any member shall have the right to transfer his membership under the provisions of the following sections:

SEC. 1. When any member wishes to transfer his membership the name of the proposed transferee shall be submitted to the committee on admissions and on the approval of two-thirds of said committee the transfer may be made, provided the member transferring has no unsettled contracts. (*Vide* const., article XIV.)

SEC. 3. In no case shall any transfer of membership be permitted until all dues to the stock exchange shall have been paid in full, said dues being hereby declared a prior lien upon the proceeds to be satisfied in full before any distribution thereof shall be made.

71 ARTICLE XIV.

Suspended Members—Readmission Claims of Creditors, etc.

SEC. 1. Any member who fails to comply with his contracts or who becomes insolvent shall be suspended until he has settled with his creditors. Such member shall immediately inform the president, in writing, that he is unable to meet his engagements, and it shall be the duty of the presiding officer thereupon to give notice from the chair of the suspension of such member. * * *

SEC. 2. When a suspended member applies for readmission he

[1] Adopted June 25, 1879.

shall be required to furnish to the chairman of the committee on admission a list of his creditors and a statement of the amounts owing and the nature of his settlement in each case. * * * Upon the applicant presenting satisfactory proof of his settlement with all his creditors the committee shall proceed to ballot for him in accordance with its prescribed rules and regulations. * * * If rejected by the governing committee he shall cease to be a member of the New York Stock Exchange.

SEC. 3.* If any suspended member fails to settle with his creditors and apply for readmission within one year from the time of his suspension his membership will be disposed of by the committee on admission, and the proceeds paid *pro rata* to his creditors in the exchange. The governing committee may, by a vote of two-thirds of the members present, extend the time for settlement and for application for readmission of such suspended member.

DECEMBER 5, 1884—3¼ p. m.

Present: Junkin, Pritchard, and Sparhawk.

JOHN G. JOHNSON, a witness called by the assignees, being duly sworn, was examined by Mr. JUNKIN as follows:

I am the secretary and treasurer of the Philadelphia Stock Exchange, and have been for twelve or fifteen years. During that time I have known of transfers of memberships—quite a number in every year. Those transfers required the approval of the committee, and admission and balloting, formerly by the members and now by the governing committee.

Charles T. Yerkes, Jr., was suspended for insolvency in 1871, and was reinstated within the last two or three years upon the
72 payment by him to the members of his indebtedness to them.

He was a member, I think, when I became secretary and treasurer. To notify him of his suspension was one of the first of my official acts. My immediate predecessor was Thomas Hale. I don't know that I have possession of Mr. Hale's correspondence.

Q. What has been about the average price for seats during the last ten or twelve years, since 1871?

A. It varied greatly. I have a list of some prices taken from my books:

1872	sale at $1,275, one at $1,300
1873	sale at $1,100, one at $1,350
1874	sale at $1,400, one at $1,500
1875	sale at $1,500, one at $1,800
1876	sale at $2,500, one at $3,000
1877	sale at $1,800, one at $2,500
1878	sale at $1,000, one at $1,800
1879	sale at $1,050, one at $2,900
1880	sale at $3,000, one at $4,150

*Amended August 23, 1879.

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1880	sale at $3,000, one at $4,150

* Amended August 23, 1879.

1881 ---------- sale at $4,025, one at $7,600
1882 ---------- sale at $6,200; one at $7,000
1883 ---------- sale at $4,000, one at $6,000
1884 ---------- sale at $4,000, one at $5,000

Q. Could you say that these fairly represent the average of sales?
A. I think they did. I have been subpœnaed to come here.
Q. After Mr. Yerkes' suspension were the yearly dues paid?
A. They remained unpaid until after his readmission; then he paid $150 or $160, or thereabouts, back dues. There were no penalties during his suspension. He was obliged to pay the dues incurred during his suspension. Mr. Yerkes continued paying the gratuity dues during his suspension. His family would have got no benefit from it if he had not.
Q. When a member in good standing dies, not owing either the exchange or any of its members, is the privilege granted his personal representatives of disposing of his membership to a person acceptable to the exchange?
A. Yes, sir; no objection is made if the person is a proper one.

Cross-examined by Mr. PRITCHARD:

The gratuity dues amount to fifteen dollars on the death of each member. The privilege of sharing in the gratuity fund is
73 an element in the value of the memberships. We pay $4,000 now. The fund was established in 1875. The amount paid first was $2,000, increased to $3,000, now to $4,000.

Q. Have you ever received any notices by the assignees of Mr. Yerkes that they claimed this seat?
A. I never received any notice. Within a year or so there was a notice sent to Mr. Brice, the president, to which I replied. That is the only notice I have any remembrance of.

To Mr. Junkin:

Mr. Hale is dead. The assessment for the gratuity fund at first was ten dollars on the death of each member.

(Signed) JOHN G. JOHNSON.

Sworn and subscribed before me—
(Signed) J. MASON,
Register in Bankruptcy.

Paper annexed, marked "Exhibit A," produced by Mr. Sparhawk, who says this is a statement of the dividends paid by the estate to members of the stock exchange:

Charles B. Keene, July 19, 1872	$527	64
May 12, 1873	474	88
April 5, 1878	422	11
January 30, 1880	52	76
Sailer & Stevenson	39	71
	35	74
	31	77
	3	97

	Lewis Seal	57 24
		51 51
		45 79
		5 72
	Thomas S. Young	40 00
		36 00
		32 00
	Austin Oberge	357 58
		320 92
		285 26
		35 66
74	P. H. Brice & Co.	254 81
		228 43
		203 05
		25 38
	Dunn Bros.	70 30
		62 37
		55 44
		6 93
	Benjamin Sterling	3 85
		2 34
		2 08
		0 26
	D. C. Wharton Smith & Co.	41 06
		36 05
		32 05
		4 01
	J. K. Wildman	120 34
		107 40
		95 47
		11 93
	Wm. H. Bacon	35 75
		30 83
		27 40
		3 43
	R. Ellis & Co.	36 46
		31 46
		27 97
		3 50
	Francis Wister	109 70
		97 38
		86 56
		10 82
	Kurtz & Howard	66 55
		28 02
		3 50
	Narr & Ladner	25 04
		10 54
	E. W. Clark & Co.	368 37
		46 05
	Drexel & Co.	718 48
		45 37

75 In the District Court of the United States for the Eastern District of Pennsylvania.

In re CHARLES T. YERKES, Jr. (Trading as C. T. Yerkes, Jr., & Co.), a Bankrupt. } No. —. In Bankruptcy.

To the Hon. William Butler, United States district judge:

The petition of John Sparhawk, George J. Gross, and J. Davis Duffield, assignees in bankruptcy of the said Charles T. Yerkes, Jr., respectfully represents—

That on the 2d day of ——, A. D. 187–, the said Charles T. Yerkes, Jr., was duly adjudicated a bankrupt in said court by the Hon. Judge Cadwallader, who was then judge of the said court; that your petitioners were duly appointed the assignees of said bankrupt on the 24th day of January, 1872, and have duly qualified in accordance with law; that on the 24th day of January, 1872, all of the said bankrupt's estate of every description was assigned according to the bankrupt law, and the same is now vested in your petitioners, except what has been duly sold and divided among the creditors of the said bankrupt.

That at the time the said Charles T. Yerkes, Jr., was adjudicated a bankrupt and his assets of every description so vested in
76 your petitioners he was a member of an association located and doing business in the city of New York and State of New York, known as the New York Stock Exchange, which existed and still exists under a constitution and by-laws whereby the membership therein is secured to each member, and such membership is transferable under the said constitution and by-laws.

That he also at the same time was a member of a similar association known as the Philadelphia Stock Exchange, located and doing business in the city of Philadelphia, which existed and still exists under a similar constitution and by-laws.

That the members of the said association are engaged in the sale of stock of all kinds, whose sales are regularly reported in the daily newspapers of the county, and the same are conducted in the mode in which all such associations are managed in this and other countries.

That the said membership in each of said associations is of considerable value, and your petitioners are desirous of realizing the value thereof for the benefit of the estate; that recent decisions of the courts have held that these memberships are assets of a bankrupt estate, and that the assignees should sell the same and obtain the value thereof for the benefit of the creditors of the bankrupt estate.

That your petitioners have had communications with the said Charles T. Yerkes, Jr., as to the sale of the said membership in the said association, and he denies that your petitioners have
77 any right to sell or dispose of the same, and that he has some rights or claims therein which render it improper for your petitioners to sell the same.

Your petitioners believe that if they expose the said rights to membership in the said association to public sale in order to get the best price for them that the said Charles T. Yerkes, Jr., will so interfere with the proper sale thereof by notices to purchasers and the like that purchasers will be deterred from purchasing and buying the same.

Wherefore they pray that your honor would determine the rights of the said Charles T. Yerkes, Jr., and your petitioners, respectively, thereto, and to this end that you would grant a citation to the said Charles T. Yerkes, Jr., to appear before your honor at a proper time to show cause why an order should not be made for the sale of his estate in his membership in the said association upon a proper hearing, and that he may be ordered not to interfere with the sale, and that your honor may make such further order and decree as the exigencies of the case may require.

78 In the District Court of the United States for the Eastern District of Pennsylvania.

In re CHARLES T. YERKES, Jr. (Trading as C. T. Yerkes, Jr., & Co.), a Bankrupt. } No. 1434. In Bankruptcy.

To the Hon. William Butler, judge of said court:

The answer of Charles T. Yerkes, Jr., to the petition of John Sparhawk, George J. Gross, and J. Davis Duffield, assignees in bankruptcy, filed April 28, 1884, respectfully represents that it is true respondent was duly adjudicated a bankrupt in December, 1871, as set forth in said petition, and that petitioners were duly appointed his assignees.

That it is also true that respondent was, at the time of said adjudication, a member of the unincorporated associations known as the New York Stock Exchange and the Philadelphia Stock Exchange, respectively.

Respondent further showeth that his membership in each of said associations was a personal privilege and not a property right.

That by the constitution and by-laws of each association admission to membership could only be had by an election by ballot, in which the applicant received a certain number of votes; that
79 while the membership could be transferred, such transfer could only be made to a person elected by ballot in the manner above provided, and could not be made in any case by a member who had any unsettled contracts with or claims against him by any other member of the association; that the insolvency of a member worked an immediate suspension from the privileges of the association, and that upon the subsequent failure of the member to settle with his creditors and apply for a readmission within one year from the time of his suspension his membership could be sold by the association and its proceeds divided among his creditors belonging to the association.

That at the time of said adjudication in bankruptcy respondent was indebted in large amounts to members of both of said associations and had, in consequence, lost his right of transferring his membership and was suspended from the privileges of a member.

That shortly after said adjudication the petitioners notified the said associations that they claimed the said memberships, but that neither of said associations recognized any right or interest in said petitioners, but, on the contrary, recognized and treated respondent as the only person entitled to the privileges of said memberships; that respondent himself has always claimed and held adverse possession of said memberships as against petitioners, and as no proceedings were instituted by petitioners to enforce any supposed right on his part he supposed them to have abandoned all claim.

80 That subsequently respondent, by his personal exertions and with moneys earned by him after said adjudication in bankruptcy, procured releases from and settlement with all his creditors who were members of said associations, and was duly readmitted to membership in accordance with their rules.

That during the twelve years since adjudication he has paid the annual charges due and assessments for the gratuity funds of said associations, amounting to over two thousand dollars; that said memberships have been saved from forfeiture solely by respondent's action and payments, and that they are now worth a much larger amount than they were at the time of said adjudication.

Respondent further shows that on the third day of October, 1873, he was duly discharged as a bankrupt by this honorable court.

Respondent is advised and believes:

I. That said memberships are personal privileges and not property which could be sold by the assignees.

II. That, inasmuch as at the time of said adjudication the memberships could not be transferred by reason of respondent's indebtedness to other members, the only right which the assignees could have acquired, if the memberships had been property, would have been the right to compel the associations to sell the memberships for the benefit of creditors within said associations, together with

81 a possible claim for any surplus—a claim which has been long since barred by the lapse of time.

III. That petitioners cannot avail themselves of the exertions and expenditures of respondent which have restored him to the privileges of membership and prevented his memberships from being forfeited.

IV. That respondent's adverse holding of said memberships for twelve years has, by the lapse of time, barred any claim of petitioners.

Respondent therefore prays that he may be hence dismissed with his reasonable costs.

82 In the District Court of the United States for the Eastern District of Pennsylvania.

In the Matter of CHARLES T. YERKES, Jr., in Bankruptcy.

To the Honorable William Butler, judge of said court:

The register in bankruptcy to whom was referred the petition of the assignees of said bankrupt's estate for a determination of their rights to certain memberships of said bankrupt in the New York and Philadelphia Stock Exchanges claimed by the said Charles T. Yerkes, Jr., and for a sale thereof, with an order upon the said Charles T. Yerkes, Jr., not to interfere therewith, and such further order and decree as the exigencies of the case may require, and the answer of said Charles T. Yerkes, Jr., thereto, respectfully reports that on May 23d, 1884, 2 p. m., Messrs. Sparhawk and Duffield, two of said assignees, with their counsel, George Junkin, Esq., and the said Charles T. Yerkes, Jr., with his counsel, Frank P. Pritchard, Esq., appeared before the register, at which time and at subsequent times testimony was taken under the said reference and argument made and the subject finally submitted by counsel for consideration and report in February 27, 1885.

The following is a statement of the material facts necessary to be considered in the determination of the questions referred:

83 Charles T. Yerkes, Jr., a banker and broker, failed in October, 1871; was duly adjudged a bankrupt, and the petitioners became assignees of his estate January 24, 1872.

In the schedules of his property filed in the proceedings under the head of "Schedule B; 2, personal property: C, stock in trade in my business of banker and broker at Philadelphia," appears the following: "Membership in board of brokers, Philadelphia, of no specified value. Membership in board of brokers, New York, of no specified value."

The board of brokers so referred to are unincorporated associations organized for the purpose of facilitating dealings in stocks and bonds. Membership is acquired and held subject to various regulations prescribed by their respective constitutions and by-laws, the iniation and annual charges being considerable in amount, the former in the New York association being now twenty thousand dollars and in the Philadelphia association ten thousand dollars.

Provisions are also made for payment upon the decease of members to their personal representatives of large sums of money, and the privileges of membership have come to be regarded as very valuable, as they may be transferred, subject to the approval of certain committees and provided there is no indebtedness of the transferrer to the associations or their members. Upon the insolvency of members their privileges are suspended, but they may be re-

84 instated upon settlement of the debts due by them to their fellow-members. In case of failure to make such settlements provisions exist for a sale of the insolvent's membership and distribution of its proceeds among his creditor members, it being thus a fundamental principle of the association that the pecuniary value

of the privileges of membership shall be mutually pledged by all the members for the fulfillment of their contracts with each other.

Charles T. Yerkes, Jr., was at the time of his insolvency and bankruptcy indebted to fifteen members of the Philadelphia association in sums aggregating $21,842.11, and to three members of the New York association in sums aggregating $8,522.99, and he was immediately suspended.

Notice of the appointment of his assignees was duly published, and one of them testifies that special notices were given to the officers of both associations shortly after their appointment in January, 1872, but he was unable to find a copy of the letter, and the secretary and treasurer of the Philadelphia association testified that he had not received it. On May 29, 1873, however, a letter, of which the following is a copy, was sent to the president of the New York association:

"MAY 29TH, 1873.

"Henry G. Chapman, Esq., pres't N. Y. Board of Brokers.

"SIR: It becomes our duty under our appointment as assignees in bankruptcy to realize the value of the seat in your board stand-
85 ing in the name of Charles T. Yerkes, Jr., and we have to ask of you to communicate through your secretary what form, if any, is prescribed by your rules for transfer or sale. Asking the favor of an early reply, I am, for myself and my colleagues, assignees of Charles T. Yerkes, Jr., in bankruptcy,

"Very respectfully yours, JOHN SPARHAWK."

At the time of the bankruptcy the market value of the membership in the Philadelphia association did not exceed two thousand dollars, and that in the New York association is testified to have been worth about four thousand dollars. It must have been, therefore, very apparent to the assignees, even if the title to the memberships passed to them as assets of the bankrupt's estate (about which there seems to have been considerable doubt), that, conceding the validity of the claims of his fellow-members under the provisions referred to, nothing could be realized from any sale the assignees might then attempt to make. Consequently, although the matter seems to have been occasionally the subject of consideration by them and their counsel, they did not offer the membership for sale nor did they take any action either against the association or the bankrupt to enforce any right they might have in respect to them. They were not required nor did they offer to pay any of the annual charges. The eighteen creditors before referred to (with the exception of one in New York for $643.59) proved their claims against the bankrupt's estate and in due course of the administra-
86 tion thereof received the dividends declared. No mention was made in their depositions of proof of their claims upon the bankrupt's membership, and no objection to their receipt of full dividends was made by the assignees or any other creditor. No action was taken by the association for the sale of the memberships.

On October 3, 1873, the bankrupt received a discharge, and about nine years thereafter, having made a settlement with all of his

creditors in the associations, having expended therein between sixteen and seventeen thousand dollars, and having paid all the accrued annual charges, was reinstated in his memberships and has continued to claim and exercise the privileges thereof to the time of the present application.

Since the date of the bankruptcy these memberships have greatly risen in value, gradually appreciating in Philadelphia until 1881, when a sale was made for seventy-six hundred dollars, and then receding with a sale in 1884 at five thousand dollars, and in New York in 1884 a membership, it was testified, was worth twenty thousand dollars.

The object of the present petition of the assignees, as stated by their counsel, is to enable them to offer these memberships for sale, accompanied by a decree of this court that all the rights and privileges appurtenant to the same at the time of the bankruptcy shall pass to the purchaser free of any claim of Mr. Yerkes thereupon by reason of anything that he may have done since then, but
87 without prejudice to any claims he may make on the proceeds of such sale for reimbursement for any expenses he may have incurred or paid, which are to be reserved for future adjudication.

With this restriction in terms, "rights and privileges appurtenant at the time of the bankruptcy," the register is unable to comprehend how such a decree will enable the purchaser, upon his application for admission, to demand the rights and privileges now recognized as appurtenant to the memberships in which Mr. Yerkes has been reinstated, for the qualification "free from any claim of Mr. Yerkes, &c.," does not affirmatively or by necessary implication describe these memberships with their rehabilitation made subsequently to the bankruptcy. A sale under such a decree would also seem to be an illusory preservation of Mr. Yerkes's rights arising from his alleged contribution of value, if such contribution does not form a part of the thing proposed to be sold.

The assignees certainly desire that their vendee may be in a position to meet any objection by the associations based on Mr. Yerkes's claims with the answer that this court has decreed that as against such vendee Mr. Yerkes has no right, title, or interest in the subject. Unless, therefore, the decree of sale is conclusive in this respect, the vendee will not obtain that for which only presumably a full price will be paid—the rights and privileges of the memberships as now held and enjoyed by Mr. Yerkes.

88 It is of primary importance, therefore, to consider whether the bankruptcy court can in this summary manner, with the present parties only before it, make such an order as will be of any practical benefit in the sale of this alleged portion of the bankrupt's assets.

That these memberships constitute a species of property which passes to assignees in bankruptcy has been determined in several cases.

In Hyde *vs.* Woods, 94 U. S., 523, the Supreme Court of the United States, when considering the question whether a disposition of a seat

in the San Francisco Stock Exchange by an insolvent (one Fenn) in trust to apply the proceeds to debts due to members thereof was a preference, by Miller, J., says: "There can be no doubt that the incorporeal right which Fenn had to this seat when he became bankrupt was property, and the sum realized by the assignee from its sale proves that it was valuable property, nor do we think there can be any reason to doubt that if he had made no such assignment it would have passed, subject to the rules of the stock board, to his assignee in bankruptcy, and that if there had been left in the hands of the defendants any balance after paying the debt due to the members of the board that balance might have been recovered by the assignees."

This decision was in October, 1876, and has been acknowledged to be an authoritative determination of the question by Choate, J., February 6, 1880, *In re* Ketchum, 1 Fed. Rep., 840, and by
89 Nixon, J., February 6, 1882, *In re* Warder, X Fed. Rep., 275, and (the same case upon a bill of review) by McKennan, J., March 28, 1883—XV Fed. Rep., 789.

The supreme court of Pennsylvania, in the case of Pancoast *vs.* Given, 92 Pa. Stats., 66, February 24, 1879, held that a seat in the Philadelphia Board of Brokers is not property subject to execution in any form, and has interpreted the case of Hyde *vs.* Woods as deciding no more than that an assignee in bankruptcy might be entitled to the balance of the proceeds after payment thereout of debts due members when a sale of the seat should have been made for that purpose.

The register assumes, however, that the case of Warder would be followed by this court.

That this species of property is subject to be held in pledge for the payment of debts due by the owner to his fellow-members and only passes to an assignee in bankruptcy subject to the rules of the stock board is also clearly established by Hyde *vs.* Woods.

The petitioners in the present case, however, contend that Mr. Yerkes's broker creditors did not avail themselves of this right of lien or pledge, but that, having proved their debts in bankruptcy and received the dividends thereon, they abandoned it. Whether sec. 5075 of the Rev. Stat. of the United States providing for the proof of claims by creditors holding securities would be applicable to these creditors need not now be considered, because it does not appear that a neglect to enforce the lien would obviate the
90 necessity of settlement of their claims in order to entitle Mr. Yerkes to reinstatement in his memberships.

This reinstatement or readmission, however, was the act of these associations procured by Mr. Yerkes, as he alleges, only by the expenditure stated. To give the assignee's vendee Mr. Yerkes's place in these associations it will be necessary, of course, to exclude him. Will not such exclusion give him a right of action against the association? Rightfully or wrongfully, his readmission has been accomplished. Can this court now by its decree in the proceeding, to which the associations are not parties, virtually expel him? Irrespective of the individual member's rights, have not associations of

this nature such an interest in maintaining a member's connection with them as to entitle them to be heard when it is attempted to disfranchise him and deprive his fellow-members of the advantages which they may derive from his membership?

It seems to the register, therefore, that on account of the absence of some of the parties interested it would not only be unjust, but futile, to attempt in this proceeding to determine these mutual and reciprocal rights.

It has also been urged in argument, although not set up in the answer of Mr. Yerkes, that the summary jurisdiction of the court over him has by virtue of his discharge terminated, and as authority for this the case of Nicholls, I Fed. Rep., 1842, is cited.

In that case the assignees of a bankrupt applied for an
91 order on him to convey to them his seat in the New York Stock Exchange. In the same court, on February 6, 1880 (*In re* Ketchum, *supra*), such an application had been granted in the case of an undischarged bankrupt, but in the case of Nicholls, Choate, J., in March 9, 1880, denied the motion, saying: "The objection that the bankrupt is liable to the summary order of the court, such as is now asked for, only before his discharge is, I think, well taken.

"After his discharge the bankrupt is no longer a debtor no more than he is bankrupt. Whether in a suit in equity the assignee can now have any relief against the former bankrupt to compel his aid, if required, in realizing the value of the asset, it is unnecessary to determine. Having failed to ask within the time limited by the statute for the summary aid of the court for the purpose, he cannot have any relief in this form."

The counsel of the assignees, while denying the correctness of this decision, has attempted to distinguish the present application from it, and has further cited sec. 5063 of the Rev. Stat. United States, giving the court ample jurisdiction to make the order now asked.

Said section is as follows:

"Whenever it appears to the satisfaction of the court that the title to any portion of the estate, real or personal, which has come into the possession of the assignee or which is claimed by him is in dis-
pute, the court may, upon the petition of the assignee and
92 after such notice to the claimant, his agent or attorney, as the court shall deem necessary, order it to be sold under the direction of the assignee, who shall hold the funds received in place of the estate disposed of, and the proceeds of the sale shall be considered the measure of the value of the property in any suit or controversy between the parties in any court, but this provision shall not prevent the recovery of property from the possession of the assignee by any proper action commenced at any time before the court orders the sale."

Without considering any other objections to the applicability of this section, it is to be observed that it evidently contemplates notice to all parties in interest. Now, while these associations may not be claimants of this property in the ordinary sense of the term, it is clear that they have an interest in the subject-matter, which, owing

to the peculiar circumstances, it may be very important to them to have protected.

Again, it is only the property which has come into the possession of the assignee or which is claimed by him that can be thus summarily sold, and such property can of course only be that vesting in the assignee by virtue of the adjudication and assignment in bankruptcy. Now, in this case the property was a suspended membership, not a membership reinstated after suspension, which latter is the proposed subject of sale.

Upon the whole the register is of opinion that there is this insuperable difficulty in the way of any useful interposition of
93 the court at this time and in the manner desired: The property now is not the property as it vested in the assignees at the time of the bankruptcy. It may be that in an appropriate proceeding the assignees may be able to show that it is the legitimate product of the first, that Mr. Yerkes has added no value in that whatever has been done inures to their benefit. The fact of his reinstatement remains, and it has effected a transmutation of the original property which cannot be ignored.

The register recommends, therefore, that the petition be dismissed without prejudice.

(Signed) J. MASON,
Register in Bankruptcy.

March 7, 1885.

94 *In re* CHARLES T. YERKES, Jr., } U. S. D. C.
a Bankrupt. } No. 1434.

Surreport of Joseph Mason, register, upon petition of assignees for order upon Charles T. Yerkes, Jr., as to his memberships in board of brokers of Philadelphia and New York.

The assignees except to the report of the register:

I. Because he fails to report the fact that these memberships were repeatedly the subject of discussion between the bankrupt and his assignees, the former maintaining that the latter had no rights to the same and that they belonged to him personally, while the latter denied this and maintained that they belonged to the estate and that they intended to realize upon them.

II. Because he fails to report that in conversations between the bankrupt and the assignees the latter stated to the former that it was proper for him to pay the annual dues and assessments upon the seats, and such payments would be recognized by the assignees as properly to be refunded to him out of anything the assignees might hereafter realize from the sale of the seats in the board.

III. Because he fails to report that whatever payments the bankrupt made on account of these memberships were made with the
95 full knowledge by him from the assignees that they claimed these memberships to be part of the bankrupt estate, and that, with the exceptions of the payment of the annual dues and assessments, he made no payment at their instance or with any suggestion or promise that he would be reimbursed therefor.

IV. Because he fails to report that whatever payments the bankrupt made on account of these memberships be made with the full knowledge that the assignees claimed his rights in the memberships of these boards as parts of the bankrupt estate, and that they did not intend to abandon the same to him, whilst at the same time he was claiming that he only had any rights to the same.

V. Because he fails to report that the bankrupt, claiming that he only had any rights or property in these memberships, whilst he knew and was notified by the assignees that they only had the right and property therein and paying or settling with his creditors, whom he was morally bound to pay, took the risk of the question who was the real owner of the memberships, and is no way entitled, by way of subrogation or otherwise, either to the money so paid to him or to the said memberships or to any interference with the sale of the same by the assignees.

VI. Because the master has failed to report that the prayer of the petition should be granted and an order should be made restraining the bankrupt from interfering with the sale of the memberships of the bankrupt in the said two boards of brokers.

_____,

Attorney for Assignees.

96 In the District Court of the United States for the Eastern District of Pennsylvania.

In the Matter of CHARLES T. YERKES, Jr., in Bankruptcy.

To the Honorable William Butler, judge of said court:

Upon the foregoing exceptions the register reports that as to the facts alleged in the first four the evidence is conflicting and somewhat uncertain, and the view he took of the matter did not require, in his opinion, any more specific statement of facts than is contained in his report.

If, however, it be deemed material to determine more particularly the attitudes maintained by the bankrupt and his assignees, respectively, with reference to these memberships from the time of the bankruptcy to the present application, the register submits the following as reasonable deductions from the testimony:

The bankrupt has always regarded the memberships as privileges which were subject to such restrictions upon their transfer that it would be impossible for the assignees to obtain anything from a sale thereof.

The assignees, on the other hand, while not conceding that they had no title to this property, were at first very much in doubt as to what may be termed its market ability. They remained in
97 this condition until they were informed of the decision of Hyde *v.* Woods, about October, 1876. That case, distinctly recognizing the priority of claim of an insolvent's fellow-member creditors upon the pecuniary value of his membership, was considered by the assignees to be "very much against their rights," and they "did not recognize the necessity of proceeding" "to realize"

"what there might be in the seat" until Judge McKennan's decision in the case of Warder, in March, 1883.

Up to this time whatever conversations or discussions took place between the assignees and the bankrupt upon the subject were in substantial accordance with these views.

It also appears that some time prior to the decision of Hyde *v.* Woods the bankrupt called the attention of one or two of his assignees to some notice of dues to one of the boards which he had received, and that one of the assignees thereupon, in the presence of another, told the bankrupt that he thought he would be the appropriate party to pay it, and that any claims of that character which he should pay would be recognized by the assignees as properly to be refunded to him out of anything the assignees might realize for the seats in the boards.

It does not appear that there was ever any declared abandonment by the assignees of this property to the bankrupt. For a period of about ten years, however, beyond giving the notices to the exchanges before referred to, there is no evidence of any action by the
98 assignees against the bankrupt or the associations to assert or define the title or sell the property.

The bankrupt, pending this long inaction, with a knowledge of the views of the assignees as before stated, entered into negotiations to effect his reinstatement, which was accomplished about May, 1882. He appears to have assumed an abandonment of any claim by the assignees.

Whether he was justified in such assumption or whether the payments or settlement with creditors referred to in the fifth exception gave him any right to the memberships or their proceeds should not, consistently with the disposition of this petition recommended by the register, be determined in this proceeding. Consideration of his claim upon the proceeds of sale seems especially inappropriate in view of the suggestion of the assignee's counsel that the order of sale might reserve this for future adjudication.

As to the sixth exception, the register is not convinced that after the lapse of twelve years the petitioners are entitled by this summary procedure to such a decree of sale as is contemplated by their present petition, for an order of sale merely of the right, title, and interest of the assignees in this property and restraining the bankrupt from interfering with that is not the relief asked for, nor does it appear that such an order is necessary, or, if made, that it would be of any substantial benefit.

(Signed) J. MASON,
Register in Bankruptcy.

March 13, 1885.

99 In the Matter of CHARLES T. YERKES, Jr., Bankrupt, on the Petition, etc., of the Assignees as to the Sale of the Estate of the Bankrupt in His Memberships in the Philadelphia and New York Stock Exchanges, and the Register's Report Thereon, and Exception of Assignees to the Register's Report. } District Court, United States. In Bankruptcy. No. 1434.

The court is satisfied with the register's report.

Thirteen years have passed since the assignment and ten since the bankrupt's discharge. In the meantime the circumstances of the property and parties involved have materially changed. At the date of assignment and for many years later nothing whatsoever could have been realized for the creditors. Acting in the belief that the rights in the boards of trade were purely personal, and that in any event the assignees could derive nothing from them, the bankrupt arranged for his reinstatement, paying large sums due other members of the board. In any order the court might make a provision could be inserted securing the return of this money, together with the value of any advantages derived by the property from the bankrupt's efforts to preserve it. Acting in good faith, justice requires that he shall have this protection. The order asked for, with such a provision, would probably yield nothing to creditors. In the uncertainty respecting the purchaser's rights it seems improbable that any one would bid a sum equal to the expenditures Mr. Yerkes has made. If an order is entered it should only be after all persons involved are brought in and all rights determined. Aside, therefore, from the question whether Mr. Yerkes may be proceeded against in the summary manner proposed, I am satisfied the order should be refused and the petition dismissed.

100 (Endorsed:) No. —. April session, 1885, U. S. C. C. *In re* Charles T. Yerkes, Jr., a bankrupt. Petition of assignees for review of order of U. S. district judge, &c. George Junkin, attorney for petitioner.

101 SPARHAWK *vs.* YERKES.

JUNE 21, 1887.

Present: Messrs. Sparhawk & Duffield & their counsel, Mr. Junkin; Mr. Prichard, for Charles T. Yerkes, Jr., and Charles E. Yerkes, def't, by agreement, and H. R. Hatfield, Esq., for Biddle & Ward, representing Phila. Board of Brokers.

Mr. Junkin offers in evidence testimony in bankruptcy of C. T. Yerkes, Jr., on petition of assignees for sale of membership in stock exchanges, Mr. Prichard — Mr. Hatfield consenting.

Adjourned to June 27, 1887, 12 m.

JUNE 27TH, 1887.

102 Present: Messrs. Junkin, Prichard, Hatfield, Sparhawk, and Duffield.

Mr. Junkin offers in evidence advertisements of assignees of their appointment — Journal of Commerce, Press, Age, Legal Intelligencer, as by their report June 26, '72.

No objection.

Also opinion of Judge Butler; also petition of Theo. Berdell.

Mr. Junkin also offers all proofs of claims of Philadelphia brokers, Drexel, Morgan & Co. and John B. Bouvier, his proof being first made for $3,163.37, and, upon exceptions, increased to $3,341.94; also receipt of Charles T. Yerkes, Jr., for John B. Bouvier, $771.47, on ac. 1st, 2d, & 3d dividend on the claim Feb. 3, '80; receipt of same for $56.75, 4th dividend.

Drexel, Morgan & Co. proof is $4,741.27.

Mr. Prichard offers inventory and appraisement of estate of bankrupt made by appraisers appointed by the court and annexed to report of assignees filed June 26, '72.

Membership board of brokers, Phila..... 00
Membership board of N. Y..... 00

Mr. Yerkes returns both of them in his schedule.

JOHN SPARHAWK, being duly affirmed.

By Mr. JUNKIN:

103 The claim of Berdell was settled—claim on assigned estate in bankruptcy—by payment of some thirty-one dollars to us as brokers' share of commission. Berdell never proved any claim against the estate in regular form. Theo. Berdell owed C. T. Yerkes, Jr., & Co. $543.59. C. T. Yerkes, Jr., & Co. owed Berdell some $1,600.00. Berdell was a creditor, and not a debtor.

Mr. Yerkes, before living in Chicago, resided at Fargo, Dakota Territory, for two or three years. I think he left Philadelphia about 1878 and has not resided here since at any time, to my knowledge. I think it likely that perhaps once in two or three years he saw the assignees after his leaving and prior to the time of filing the petition in the district court about this matter.

By Mr. PRICHARD:

I cannot fix the date exactly; it may have been two or three years earlier. I cannot be positive as to when it was, as I was not informed of the time of his departure by him.

Q. Are you positive that you did not see him oftener than once in two or three years after that time?

A. My impression is, from recollection, that I saw him but twice in a period of four or five years; there was no intercourse between Mr. Yerkes and ourselves. I speak for myself, my office being
104 the office of the assignees. He did not call on us unless he had some favor to ask or seek us, or unless he had some item

of information which he needed from the assignees or their books. I would qualify this by saying that we had met him frequently before his removal in examination before the register up to the time of the termination of our equity proceedings with Drexel & Co. and Wm. H. Kemble.

Q. Did the assignees ever make any unsuccessful attempts to communicate with Mr. Yerkes after he left this city—unsuccessful by reason of his absence?

A. I have no recollection that they did.

Q. You do not mean the master to understand that his absence from the city in any way interfered with or prevented the assignees from making or prosecuting a claim to the seats in the board of brokers, do you?

A. I do not.

JULY 1, 1887.

Present: Messrs. Junkin, Hatfield, Prichard, Sparhawk, Duffield.

Mr. Junkin offers in evidence whole bankruptcy proceedings; also form of notice of assignees.

Mr. SPARHAWK recalled.

By Mr. JUNKIN:

Q. In the interviews between yourself and Mr. Charles T. Yerkes, Jr., did you or your co-assignees in your presence,
105 either expressly or tacitly, concede that there was nothing to be realized from the seats in the New York and Philadelphia boards?

(Objected to by Mr. Prichard because it is an attempt to obtain witness's testimony as to a conclusion of law when he has already been fully examined as to the conversation which occurred, from which the court can draw its own conclusions.)

A. I never, speaking for myself—never admitted, expressly or tacitly, that there was nothing in the seats or privileges of the two stock boards in any conversation had with Mr. Yerkes, but, on the contrary, always claimed that they were assets of the estate that it was our duty to follow and claim as property, and I always denied that it was a mere personal privilege and not an asset, and such, so far as I can remember, was the uniform and always—declaration of Mr. Gross and Mr. Duffield on every occasion when the matter was the subject of conversation between ourselves and with him, and this was true up to the time when the Supreme Court of the United States made its decision on the San Francisco case. After that time there was a conversation between Mr. Yerkes and the assignees, if I remember rightly, in which it was admitted for the time being or for the present; our proceedings were suspended as to further action.

Q. Why?

106 (Objected to by Mr. Prichard unless reasons were communicated to Mr. Yerkes.)

A. We never withdrew the claim.

Q. Why?

A. For the reason that we always had acted by advice of counsel in that particular matter, and by advice of counsel we had acted at the time of the announcement of that decision.

Q. Had you, or the counsel, any notice of the restoration of appellant thereof to his seats by Mr. Yerkes?

A. We had not.

J. DAVIS DUCKETT, being duly sworn.

By Mr. JENKS:

Q. Did you or your associates, at any interview with Mr. Yerkes at which you were present, either expressly or tacitly, concede that there was nothing to be realized for the estate out of his seats in the two boards?

Same objection.

A. No, sir; on the contrary, we always asserted to him that something could and would be realized out of them, but our difficulty always was as to the method to be employed, and then, after the Hadelphia and the San Francisco board case, there was a conversation with him—I don't remember whether with him or not, but I now remember it was with him—in which that case was referred to, and its then apparent bearing in his favor noted—spoken of. We did not, however, then concede that there was no value in these seats to be realized for the estate. Misapprehension as to the effect of that decision was removed by the decision of Judge McKennan in a subsequent case.

There was no notice given to me by Mr. Yerkes as to his restoration or application therefor. As to his design in the matter, there may have been misapprehension on our part as to what he was at.

Cross-examined by Mr. PANCHARD:

Q. Please state what you understand to have been the misapprehension of the decision of the Supreme Court in the San Francisco board case, and whether that was a misapprehension of all the solicitors and all the counsel and of which of them.

A. The decision of the Supreme Court in that case now I do not have before me, but to I recollect particularly the construction that was at first put upon it. The decision, in its effect upon us, did nothing more than to cause us to rest upon our rights, which we thought were rendered uncertain by that decision, and the intangible character of this property, which we supposed Mr. Yerkes had [illegible] upon, rendered it prudent, as we thought, particularly after what had passed between me and himself as to fines and assessments as testified to by me—rendered it prudent to do nothing in the matter as against the stock boards by reason of the peculiar character of their rules and regulations. We had been informed that Mr. Yerkes was paying on the claims of the brokers here in Philadelphia at least, and probably in New York, and we thought that that policy pursued by him would put things in such

a shape that at some time we would be in better shape for a contest in this matter.

We knew that these claims of the brokers had some sort of status against the seats, and as long as Mr. Yerkes was taking the chances in the payment of these debts of the brokers we thought that that policy would enure to the benefit of his estate and leave the question as to the rights to these seats in better shape for a contest.

As to what was said by counsel as to the effect of that decision, I do not now remember.

Q. In answer to Mr. Junkin's question you had testified positively that there was a misapprehension as to the decision of the Supreme Court, and that this misapprehension was the cause of delay on the part of the assignees and was removed by Judge McKennan's decision. Do you mean the court to understand that you, one of the assignees and a member of the bar, can give no better account
109 of what this misapprehension which caused so many years' delay was than is contained in your last answer?

(Objected to as an argumentative question by Mr. Junkin.)

A. In the first place I have not said that this misapprehension was the sole cause of the delay. That was a fact and an incident which in its effect was calculated to produce delay; but the delay was, for one reason, because the current business of the estate was so entirely monopolizing the attention of the assignees and their counsel that it was thought as between Mr. Yerkes, who presumably desired his estate realized for the benefit of his creditors, and ourselves there was no injury to the rights of creditors coming from this delay. We thought—I thought it; I am sure—that we had hedged our rights or protected our rights by what had taken place between us and by what we had done.

Adjourned to July 6th, 1887, 2 p. m.

JULY 6TH, 1887.

Present: Messrs. Sparhawk, Duffield, Junkin, Prichard.

Cross-examination — J. DAVIS DUFFIELD resumed by Mr. PRICHARD:

Q. You have said that one of the causes of delay in presenting petition respecting stock-exchange seats was because the
110 current business of the estate was entirely monopolizing the attention of the assignees. You do not mean to say, do you, that from this date of the assignees' appointment, Jan. 24, 1872, down to the filing of the petition, April 28, 1884, the three assignees and their counsel were so constantly engaged with the affairs of this estate that they had no time to think about these seats?

A. I think that the current business of the estate entirely monopolized the attention of the assignees down to the time of the decision of the San Francisco case, and it was not determined as to the method of proceeding at all until after the decision of Judge Mc-

Kennan before spoken of. The attempts to get the seats sold, so far as they were made, of course, did not include any advertisement—were made by Mr. Sparhawk and perhaps Mr. Gross, through interviews with members of the board of brokers here.

(Objected to by Mr. Prichard.)

Of course the attention of the assignees was to a great extent, if not entirely, monopolized by the current business of the estate after the San Francisco case.

Q. Do you mean after October, 1876, date of Supreme Court decision?

A. My recollection is that was the case, that there was a great deal of business, perhaps of different kinds, done in con-
111 nection with the estate after that time. However, we supposed that the matter of stock-board seats, being a difficult matter to get at, would doubtless keep at least better than some other things.

Q. Then between October, 1876, date of San Francisco decision, and March 28, 1883, date of Judge McKennan's decision, the assignees were considering the question of these seats?

A. Why, of course, we were considering the matter from time to time and doing such things with reference to them as we thought necessary.

Q. You have said that the assignees supposed that Mr. Yerkes had designs on these seats. Please fix, as near as you can, the time at which that supposition first arose.

A. Well, I think that the supposition first arose when he first informed us to that effect, that he did not think the assignees could do anything with them, or whatever language he used. I don't mean to say that was the specific language. I can't tell the time when he said this. I don't remember whether before or after his discharge.

Q. Was it within the first five years after you were appointed?

A. I should think so—certainly.

112 JOHN SPARHAWK recalled.

To Mr. JUNKIN:

The notice given to the president of New York Stock Exchange, May, 1873, having elicited no answer, the assignees, through Mr. Geo. J. Gross, one of their number, arranged with Walter McMichael, a large creditor, to represent them in a personal interview, in New York, with the pres't of the exchange or with the governing committee as to the subject-matter of the written communication to the president a few weeks before.

In October, 1883, I conferred with counsel on the subject of the stock-board seats, at or about the time of Judge McKennan's decision. Mr. Junkin advised us that it was our duty, in the light of that decision, to assume the offensive or aggressive and to take such action as they might under explanation of Judge McKennan of scope and limitation of San Francisco decision, whereupon we im-

mediately proceeded to employ counsel in New York to act in his discretion or to interview in his discretion the New York Stock Exchange direction, and we proceeded under advice of Mr. Junkin from November down to this time.

Our correspondence with our New York counsel has been brought down to within the last week and since the last meeting.

By Mr. PRICHARD:

Q. Have you carefully examined the minutes of the as-
113 signees with a view to ascertaining what they contained with reference to the seats in the stock exchange?

A. I have very carefully examined them.

Q. Are the two entries to which you have referred the only entries which appear in these minutes relating to the seats?

A. They are not.

Q. Have you any objection to showing me all the other entries?

A. I have an objection at the present time, that I have not time to refer to the series of pages upon which notation has been made of interviews, conversations, consultations with counsel, &c. Many of these are so abbreviated that, while perfectly intelligible to myself, their elaboration and explanation would involve a great deal of time, which I cannot give.

I would say that the keeping of minutes is no part of the duty of an assignee in bankruptcy, and at no time within the fifteen years have we been required to produce our minutes before the court or register.

Mr. Prichard calls upon the complainants who are present to produce the minutes which they have testified they kept, which are now here and an extract from which has been read by one of the complainants in the course of his testimony-in-chief.

Mr. Junkin says: We have no answer.

Mr. Sparhawk says: The minutes were my personal notes
114 and not those of the assignees, and I decline to produce them; they were notations made by myself for my personal convenience only.

AUGUST 23, 1887—11 a. m.

Present: Messrs. Junkin, Prichard, Sparhawk, Duffield.

Mr. Prichard calls upon the assignees and their counsel to produce the minutes of their proceedings which the witness has admitted that he kept and to which he referred in giving his testimony-in-chief.

Mr. Junkin says that the assignees as such kept no minutes. One of the assignees kept minutes from time to time of various things that transpired that counsel have personally no objection to the production of, if the witness sees fit to produce them, but as their private memoranda made for their own use he cannot see that their production is a matter of right.

The MASTER: I think the witness should refer to all entries inquired about made by him in the book referred to in relation to

the subject-matter of the present suit, and he is requested
115 to do so.

Q. Who first brought to your attention decision of Judge McKennan?

A. Mr. Junkin.

Q. Does your recollection coincide with Mr. Duffield that that decision announced a different principle from that which had been previously announced by the Supreme Court of the United States?

A. My recollection is and was at the time that I testified of that Mr. Junkin had addressed us a written communication calling our attention to Judge McKennan's opinion as to the limitations of the decision of the Supreme Court of the United States, and that thus notified by letter I called on Mr. Junkin and had a conversation with him on the subject, and I have made very diligent search for that letter which I supposed he had written us, but have been unable to find it. I am by no means certain that any such letter was written, but this Mr. Junkin called our attention to the matter and explained our duty I am pretty certain. I certainly understood Mr. Junkin to say that Judge McKennan's enunciation of what the Supreme Court had said in the San Francisco case was a modification of or limitation of the decision of the Supreme Court of the United States quite inside of the general interpretation and understanding of that decision.

116 (Endorsed:) No. 31. October sessions, 1885. U. S. circuit court. In equity. John Sparhawk *et al. vs.* Charles T. Yerkes, Jr., and others. Master's report. Filed April 19, 1888.

117 And afterwards, to wit, on the 19th day of April, 1888, comes the complainants, by their counsel, and files exceptions to the report of the master, which, being read, are in the words and figures following, viz:

Exceptions to the Report of the Master.

The plaintiffs except to the master's report:

I. Because he reports that the property in the rights of the bankrupt to membership in the association of brokers is not the property vested in the assignees at the time of the bankruptcy.

II. Because the claims upon these rights by the other members of these associations in no way altered the nature or character of these rights as property.

III. Because the payment by the assignees of dividends to these members thus having claims upon the property in the associations to the amount of seven thousand dollars ($7,000) and upwards was in aid of the release of the property from these claims.

IV. Because Charles T. Yerkes, Jr., did nothing whatever to preserve or give value to the property. At most, he merely asked his creditors, who were his fellow-members, not to sell or sacrifice the property. Any payments of dues, etc., by him were made with the

consent of the assignees, and not by virtue of any agreement that their rights were surrendered or in prejudice of the same.

V. Because the assignees, having paid twenty-eight (28) per cent. of the bankrupt's debts due to his creditors, who were members of the association, amounting to seven thousand dollars ($7,000) and upwards, as against Charles T. Yerkes, Jr., who had full knowledge of these facts, are entitled to be subrogated to the rights of those creditors as against him.

VI. Because Charles T. Yerkes, Jr., knew when he did his honest duty in paying or settling with his creditors for the remaining seventy-two (72) per cent. of his debts due them that the as-
118 signees claimed the rights in these associations as part of the bankrupt estate, and he was not by them misled or entrapped in any way, and he gave no notice to the assignees of his intended settlement with these creditors, so far as the testimony shows.

VII. Because these suits are not brought for the recovery of any property from either of the associations or Charles T. Yerkes, Jr., but merely to secure such disposition of the property as will realize the full and real value thereof, and the same are not within the condemnation of the statutory provision as to limitations of actions cited by the master.

VIII. Because in any event Charles T. Yerkes, Jr., should be required to refund the dividends paid by the assignees to his creditors holding claims against his rights in the said associations.

IX. Because the master reported that the bills should be dismissed.

GEORGE JUNKIN,
Attorney for Plaintiffs.

119 And afterwards, to wit, on the 26th day of April, A. D. 1888, this cause coming on to be heard on exceptions to master's report and having been fully argued by counsel for the respective parties, the court takes the same under advisement.

And afterwards, to wit, on the 27th day of April, A. D. 1888, the court file the following opinion, to wit:

120 SPARHAWK *vs.* YERKES.

Per curiam:

The property to which this controversy relates is of a peculiar character. It is incorporeal, consisting of the defendant's membership or a right to seats in two associations called the New York Board of Brokers and the Philadelphia Board of Brokers. By the rules of these associations this property was charged with certain debts due to their members and with a liability for future assessments, which charges are inseparable from the ownership and the right to dispose of or control the property. It could only, then, pass to the complainants as the assignees of the defendant, subject to the conditions under which he held it and to their explicit ac-

ceptance of them. This is the result of numerous decisions in this country and in England.

The property was not unconditionally devolved upon the
121 complainants by the assignment; they might accept it *cum onere* or they might decline to accept it, and thereby preclude the subjection of the other assets assigned to them to additional burdens, or they might have sold the problematical interest of the defendant in it; but it was incumbent on them to manifest their acceptance of it or their purpose to accept it within a reasonable time after their right accrued, or lose it by undue delay.

For a period of at least twelve years the complainants were purposely quiescent or inactive in asserting any acceptance of the property or in exercising any control over it, and this is especially significant of their purpose not to accept it, in view of the fact that it was set down in the appraisement as of no value. In the meantime it was saved from adverse disposition or forfeiture by the efforts and large expenditure of money of the defendant.

Laches, so conspicuous and expressive as has been exhibited in this case, is sufficient to deny the interposition of a court of equity and to justify a presumption of an intent on the part of the complainants to forego any purpose to withdraw the property
122 from the care and control of the defendant. We think the relief prayed for ought not to be granted.

The exceptions to the master's report are therefore overruled and the bill dismissed with costs.

(Endorsed:) No. 31. October, 1885. C. C. U. S., E. D. of Pa. Sparhawk *vs.* Yerkes. Opinion. Filed Apr. 27, 1888. Samuel Bell, clerk.

123 And afterwards, to wit, on the 28th day of April, A. D. 1888, the court enters the following decree, viz:

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

SPARHAWK *et al.*, Assignees, &c.,
vs.
YERKES *et al.* } No. 31. October Sess., 1885.

And now, to wit, this 28th day of April, A. D. 1888, this cause having been set for hearing on exceptions to the report of the master and coming on now to be finally heard thereon and being argued by counsel and submitted to the court, and the court having considered the same and being sufficiently advised in the premises—

It is ordered, adjudged, and decreed that the report of the master
be confirmed; and it is further ordered, adjudged, and de-
124 creed that the bill of complaint herein be, and the same is hereby, dismissed, and that the respondents have and recover their costs and charges, taxed at $—, from and of the complainants.

(Endorsed:) 31. Oct. sess., 1885. C. C. U. S., E. D. of Pa. Sparhawk *et al.*, assignees, &c., *vs.* Yerkes *et al.* Decree. Filed April 28, 1888.

125 And afterwards, to wit, on the 10th day of May, A. D. 1888, the complainants, by their attorney, George Junkin, Esq., comes into court here and prays an appeal to the Supreme Court of the United States in the words and figures following, viz:

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

SPARHAWK *et al.*, Assignees, &c.,
vs.
YERKES *et al.*
} No. 31. October Sess., 1885.

And now, to wit, this 10th day of May, A. D. 1888, George Junkin, Esq., counsel for complainants, appears in open court and prays an appeal to the Supreme Court of the United States from the decree of this court, entered and filed the 28th day of April, A. D. 1888, dismissing the bill of complaint with costs in the above case.
126 Whereupon the same is allowed, with security in the sum of five hundred dollars ($500).

(Endorsed:) 31. Oct. sess., 1885. C. C. U. S., E. D. of Pa. Sparhawk *et al.*, assignees, &c., *vs.* Yerkes *et al.* Order allowing appeal. Filed May 10, 1888.

127 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

JOHN SPARHAWK *et al.*
vs.
CHARLES T. YERKES, Jr., *et al.*
} No. 31. October Sess., 1885. In Equity.

Know all men by these presents that we, John Sparhawk, George J. Gross, and J. Davis Dulfield, assignees in bankruptcy of Charles T. Yerkes, Jr., a bankrupt, complainants in the above case and appellants, and "The City Trust, Safe Deposit and Surety Company" are held and firmly bound unto the above-named Charles T. Yerkes, Jr., Joseph G. Cassatt, Sabin W. Colton, Jr., Frank N. Dick, George C. Thomas, David A. Freed, Robert Glendenning, Jr., Solomon L. Levy, Percy F. Smith, Lewis H. Taylor, Jr., Augustus Thouron, Frank Smyth, and others, members of the New York Board
128 of Brokers, respondents, in the sum of five hundred dollars ($500), to be paid to the said Charles T. Yerkes, Jr., and the other parties just named, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twelfth day of May, A. D. 1888.

Whereas lately, at a circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in the said court between John Sparhawk *et al.* and Charles T. Yerkes, Jr., *et al.*, as defendants, a final decree was rendered against the said John Sparhawk, George J. Gross, and J. Davis Duffield, and the said John Sparhawk, George J. Gross, and J. Davis Duffield having taken an appeal, which appeal has
129 been allowed by the said circuit court to the Supreme Court of the United States, to reverse the said decree in the aforesaid suit:

Now, the condition of this obligation is such that if the said John Sparhawk, George J. Gross, and J. Davis Duffield, or either of them, assignees as aforesaid, shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation to be null and void; otherwise to remain in full force and virtue.

JOHN SPARHAWK, [L. S.]
GEORGE J. GROSS, [L. S.]
J. DAVIS DUFFIELD. [L. S.]

Assignees in B'k'cy. Est. of Chas. T. Yerkes, Jr.

THE CITY TRUST, SAFE DEPOSIT AND SURETY CO. OF PHILADELPHIA.
CHAS. M. SWAIN, *President.*

[SEAL.] Attest: JAMES F. LYND, *Sec'y.*

Sealed and delivered in the presence of—

As to John Sparhawk:

CHARLES G. MAYHEW.
JULIUS B. PRICE, Jr.

As to George J. Gross:

GEORGE J. GROSS, Jr.
W. H. LIVINGOOD.

As to J. Davis Duffield:

T. J. MURRY.

Approved.

WM. BUTLER, *Judge.*

130 (Endorsed:) No. 31. October sess., 1888. C. C. U. S., E. D. of Pa. Sparhawk *et al.*, assignees, &c., *vs.* Yerkes *et al.* Bond on appeal. Filed May 18, 1888.

131 THE UNITED STATES OF AMERICA, *ss:*

To Charles T. Yerkes, Jr., a bankrupt: Joseph G. Cassatt, Sabin W. Colton, Jr., Alexander H. De Haven, Frank N. Dick, George C. Thomas, David A. Freed, Robert Glendenning, Jr., Solomon L. Levy, Percy F. Smith, Lewis H. Taylor, Jr., Augustus Thouron, Frank Smyth, J. Edward Simmons, D. C. Hays, George W. Ely, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal from a decree filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein John Sparhawk, George J. Gross, and J. Davis Duffield, assignees in bankruptcy of Charles T. Yerkes, Jr., a bankrupt, — appellants and you are appellees, to show cause, if any there be, why the decree rendered against said appellants, as in said appeal mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 18th day of May, in the year of our Lord one thousand eight hundred and eighty-eight.

WM. BUTLER, *Judge.*

I accept service of the above citation.

FRANK B. PRICHARD,
Att'y for Charles T. Yerkes, Jr.
SAM'L B. HUEY,
Att'y for R. Glendenning & Co., L. H. Taylor & Co.
READ & PETTIT,
For Percy F. Smith.
SAMUEL DICKSON,
For Geo. C. Thomas, F. N. Dick, Frank Smyth, D. A. Freed, S. W. Colton, Jr.

132 UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of John Sparhawk *et al.*, assignees, &c., *vs.* Charles T. Yerkes Jr., *et al.*, No. 31, October session, 1885, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 22nd day of May, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and twelfth.

Seal U. S. Circuit Court, E. D. Pennsylvania.

SAMUEL BELL,
Clerk of C. C.

[Endorsed:] No. —. — sessions, 188–. Circuit court United States, eastern district of Pennsylvania. Certified copy.

Endorsed on cover: E. Pennsylvania C. C. U. S. No. 371. John Sparhawk, George J. Gross, and J. Davis Duffield, assignees in bankruptcy of Charles T. Yerkes, Junior, a bankrupt, appellants, *vs.* Charles T. Yerkes, Junior, a bankrupt; Joseph G. Cassatt, Sabin W. Colton, Jr., Alexander H. De Haven, Frank N. Dick, George C. Thomas, David A. Freed, Robert Glendenning, Jr., Solomon L. Levy, Percy F. Smith, Lewis H. Taylor, Jr., Augustus Thouron, Frank Smyth, J. Edward Simmons, D. C. Hays, and George W. Ely. Filed June 4, 1888.

S. C. U. S., October Term, 1891.

SPARHAWK *et al.*
v.
YERKES *et al.* } No. 56.

S. C. U. S., October Term, 1891.

SPARHAWK *et al.*
v.
ACKLEY *et al.* } No. 57.

The following facts are agreed upon to be considered of record in the above-entitled causes:

That Charles T. Yerkes, Junior, made a voluntary assignment for the benefit of creditors to Joseph M. Pile, Esq., October 24th, 1871.

That the petition in bankruptcy was filed November 10th, 1871.

That on ~~November~~ February 8th, 1872, the court of bankruptcy divested the said Joseph M. Pile of the estate vesting in him by the said voluntary assignment, and directed the assignment and transfer by the said Joseph M. Pile of the estate of the bankrupt unadministered by him.

That subsequently the said assignment was executed and delivered to the assignees of the bankrupt.

That the total amount of debts proven by creditors before the register in bankruptcy was eight hundred and twenty-nine thousand one hundred and ninety-eight dollars and forty-five cents ($829,198.45), and that the number of creditors was ninety-nine.

That the dividends declared by the assignees up to the time of filing the bills in equity in this litigation were as follows:

July 19th, 1872, ten per cent.
May 12th, 1873, nine per cent.
April 5th, 1878, eight per cent.
January 30th, 1880, one per cent.

WAYNE MACVEAGH,
A. H. W.,
Attorney for Appellants.
FRANK P. PRICHARD,
Attorney for Appellees.

[Endorsed:] Supreme Court U. S. 1891, October term. Nos. 56 & 57. Sparhawk *et al. vs.* Yerkes *et al.* and Same *vs.* Ackley *et al.* Agreed statement of facts. Filed Sept. 25, 1891.